

***United States Court of Appeals  
for the Second Circuit***



**EXHIBITS**



74-1273

Exhibit in U.S. ex rel. Sebastian  
Rossilli v. LaVallee , 74-1273

\$

State Court Transcript  
of Sebastian Rossilli,  
Indictment # 20991  
Vol. I



To be returned to:  
Margery Evans Reifler  
N.Y.S. Attorney General's Office  
(212) 488-7590

# Appendix 0

## FINANCIAL

	Current Ratio	<u>Net Profit</u> Net Sales	<u>Sales</u> Net Wk.
From 1963 annual report New Haven B. & C. Co.	1.80	(2.31)*%	5.7
For a Broadstreet upper quartile	4.59	4.76	10.2
1963 statistics average	2.49	2.67	6.7
56 companies lower quartile	1.65	1.07	4.8
Robert Morris Associates			
1963 statistics, small cos.	1.85	1.24	NA
35 cos. Pft. details on 15			
Manual of Performance Ratios			
Asset size 10 to 50 million, 1964.	2.20	3.40	5.8

\* Operating profit

\*\* Average of 62-63 inventory

110"

RATIO ANALYSIS

	<u>Sales</u> Cap.	<u>Inventory</u>	<u>Total Debt</u> Worth	<u>Inventory</u> Net Wk. Cap.	<u>Current Liability</u> Inventory	<u>Net Profit</u> Total Assets
0	9.06**		84.6%	10.3 <del>4.85</del>	1.27	(4.70)*
5	12.1		40.0	4.59	.60	
8	9.4		70.6	8.50	.94	NA
9	6.9		121.1	10.82	1.59	
	7.7		140.0	NA	NA	3.15
0	NA		70.0	NA	NA	NA

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# DEVELOPMENT OF EARNIN

	<u>Sales</u> <u>(000)</u>	<u>Profit</u> <u>Sales</u>	<u>Net Profit</u> <u>After Tax</u>	<u>Net Profit</u> <u>Before Tax</u>	<u>Ac</u> <u>Tax</u>
1964, based on 1963	\$21,000	0.53%	111	222	2
65 + 5%	22,050	1.07	236	472	2
66 + 5%	23,153	1.47	340	680	1
67 + 5%	24,311	1.87	455	910	
68 + 5%	25,527	2.27	579	1158	
69 + 5%	26,801	2.67	716	1432	

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# GS FLOW FORECAST

<u>Cum.</u> <u>Credit</u>	<u>Tax Credit</u> <u>Used</u>	<u>Tax Credit</u> <u>Expiring</u>	<u>Taxable</u> <u>Profit</u>	<u>Tax</u>	<u>Earnings</u> <u>Flow</u>
865	222	631	0		222
012	472	366	0		472
174	680	--	0		680
494	494	--	416	208	702
--			1158	579	579
			1432	716	716

*Ready P*

Test at 25%

	<u>Earnings</u> <u>Flow</u>	<u>Factor</u>	<u>Value</u>
1	222	.8001	\$177
2	472	.6402	302
3	680	.5122	348
4	702	.4099	286
5	579	.3230	187
later	716	1.0500	750

\$2,050 vs. \$2,062,516 which is  
4.50 times 458,337

**United States Court of Appeals for the Second Circuit**

**Jeff Simone, etc.,** Appellant  
-----  
against

**The New Haven Board & Carton Co., Inc., Edwin W. Miller, Sterling  
R. Chatfield, William B. Gumbard, Leon J. Simkins, et al., Appellees**

**State of New York, County of New York, ss.:**

**Bernard S. Greenberg**, being duly sworn deposes and says that he is  
**agent for Bobroff, Olonoff & Scharf** the attorney s  
for the above named **Appellant** herein. That he is over  
21 years of age, is not a party to the action and resides at **162 East Seventh Street**  
**New York, N.Y..**

That on the **3rd** day of **May**, 19 **74** he served the within **Appendix**

upon the attorneys for the parties and at the addresses as specified below

**Tyler, Cooper, Grant, Bowerman & Keefe,**  
**Attorneys for Appellee William B. Gumbart**  
**Ppst Office Box 1936, 205 Church Street, New Haven, Connecticut 06509**

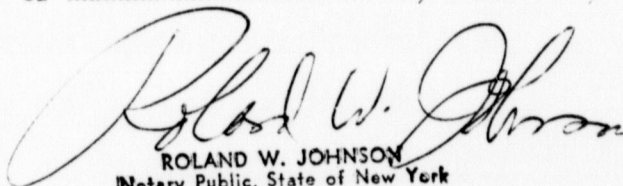
**Wiggin & Dana**  
**Attorneys for all other Appellees,**  
**205 Church Street,**  
**New Haven, Connecticut 06509**

by depositing **two true copies**  
to each of the same securely enclosed in a post-paid wrapper in the Post Office regularly main-  
tained by the United States Government at  
90 Church Street, New York, New York  
directed to the said attorneys for the parties as listed above at the addresses aforementioned,  
that being the addresses within the state designated by them for that purpose, or the places  
where they then kept offices between which places there then was and now is a regular com-  
munication by mail.

Sworn to before me, this 3rd

day of May, 1974

} Bernard S Greenberg



ROLAND W. JOHNSON  
Notary Public, State of New York  
No. 4509705  
Qualified in Delaware County  
Commission Expires March 30, 1975

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1 COUNTY COURT: NASSAU COUNTY  
2 PART IV

3 -----x  
4 PEOPLE OF THE STATE OF NEW YORK

5 -against-

6 SEBASTIAN ROSSILLI,

7 Defendant.  
8 -----x  
9

10 Mineola, New York  
11 January 17, 1967

12 B e f o r e: Hon. DOUGLAS F. YOUNG,  
13 County Court Judge

14 A p p e a r a n c e s:

15 WARREN DOOLITTLE, ESQ.  
16 Assistant District Attorney  
17 For the People

18 JOEL WEINBERG, ESQ.,  
19 For the Defendant.

20 MINUTES OF HEARING

21 Re: Robbery, 1st Degree  
22 Burglary, 2nd Degree  
23 Grand Larceny, 1st Degree  
24 Assault, 2nd Degree (5 Counts)

25 Reported by:

*Rose Levine*  
Dist. Court Reporter

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1 THE COURT: People versus Sebastian  
2 Rossilli. Defendant has answered and the People  
3 are ready. Do you want to advise me, Mr. Weinberg,  
4 the reason for the delay in our getting started to-  
5 day?  
6

7 MR. WEINBERG: I'm led to believe by  
8 the D.A. that he will not produce here today one  
9 gentleman by the name of Brown.

10 THE COURT: I'm talking about the delay  
11 in starting this hearing.  
12

13 MR. DOOLITTLE: Our office was involved  
14 in this and I don't think Mr. Weinberg was. I've  
15 been advised by our law department that the defend-  
16 ant Rossilli brought a writ of habeas corpus in the  
17 Supreme Court today.

18 THE COURT: It was returnable--

19 MR. DOOLITTLE: It was a pro se motion.  
20 He did not retain Mr. Weinberg to handle that matter  
21 for him. I guess there was a hearing, am I correct?  
22

23 MR. ROSSILLI: Yes.

24 MR. DOOLITTLE: And that's the reason  
25 for the delay. Our office opposed the application, I

1 understand.

2 THE COURT: All right. Thank you. Do  
3 you want to make a preliminary statement?  
4

5 MR. DOOLITTLE: Yes, your Honor. I'm  
6 going to request a hearing, your Honor, under Section  
7 8 of the Code of Criminal Procedure.

8 One of the witnesses in the People's case  
9 is a person by the name of John Brown--William Brown,  
10 I'm sorry--and William Brown is a witness who on the  
11 felony exam made a positive identification of the  
12 defendant, Sebastian Rossilli.  
13

14 Now, the defense of alibi has been raised  
15 by the papers submitted by Bergen, and accordingly  
16 identification becomes the crux of this case.

17 We've attempted to subpoena Mr. William  
18 Brown and it's been impossible to subpoena him.

19 Now under the provisions of the Code,  
20 Section 8, the felony exam would be admissible in this  
21 case provided the People can substantiate that with  
22 due diligence they have attempted to serve the sub-  
23 poena on defendant, William Brown, and the diligence  
24 has been whole-hearted and the fact that as a result  
25

1 of the diligence and the attempt to serve him--he  
2 is not in the State and cannot be served and what  
3 we're requesting now is a hearing.

4 I intend to show what efforts have been made  
5 on behalf of the People to serve Brown and in lieu  
6 of his appearance, the felony exam transcript of  
7 Brown's testimony will be read into evidence during  
8 this trial.  
9

10 MR. WEINBERG: May I be heard on this  
11 preliminary hearing application, your Honor, solely  
12 for the following purpose --that on February 5, 1965  
13 there was a hearing in Felony Court with regard to  
14 this defendant and at that hearing two witnesses  
15 were present, one Sydelle Marcus and one William  
16 Brown. Marcus was unable to identify the defendant  
17 and Brown made a positive identification.  
18

19 Some two years have elapsed since that  
20 date and this case has not come to trial during the  
21 period of two years. I was not the attorney for this  
22 defendant at that hearing.  
23

24 I state that in view of the fact that it  
25 would appear that the sole witness--eye witness to

1       this defendant's identification was William Brown,  
2       and further, that the defense of alibi has been set  
3       forth here, that there may have been a grave consti-  
4       tutional question involved in this matter.

5               Should this hearing permit the introduction  
6       of such testimony upon the trial, and should the nub  
7       of a decision or basis for a judgment be that hear-  
8       ing, I would state then that I do not believe that  
9       this section was designed or was purposed for any de-  
10      fendant being convicted, if he should be, solely on  
11      the predicate of a prior testimony where a protracted  
12      period of time has gone by and counsel has not been  
13      given the opportunity to cross examine in the same  
14      manner as though he would cross examine that particu-  
15      lar witness at the time of trial.

16               THE COURT: All right. We'll proceed  
17      with the hearing.

18               MR. DOOLITTLE: I call Mr. Fabian, please  
19      LEONARD FABIAN, 3 Grant Court,  
20      Hicksville, called as a witness and having been  
21      duly sworn, testified as follows:

22      DIRECT EXAMINATION BY MR. DOOLITTLE:  
23  
24  
25

1 Q Mr. Fabian, by whom are you employed, and in  
2 what capacity?

3 A The D.A. of Nassau County as a process server.

4 Q And during your employ as a process server for  
5 the D.A.'s office, were you in charge of the case of People  
6 against Rossilli--that is, getting the subpoenas out and  
7 making sure that the witnesses were subpoenaed?  
8

9 A Yes, sir.

10 Q And were certain efforts made to obtain a wit-  
11 ness by the name of William Brown?

12 A Yes.

13 Q Will you tell me what address we had where the  
14 man William Brown was a witness in the Rossilli case ori-  
15 ginally?  
16

17 A Yes, sir. 700 Park Avenue, New York City.

18 Q Will you tell me, sir, what efforts were made  
19 to subpoena the witness William Brown and what were the  
20 results of those efforts?

21 A Subpoenas were delivered to 700 Park Avenue and  
22 we were not able to locate William Brown at that particular  
23 address.  
24

25 Q Did you ascertain that he no longer lived at

1 that address?

2

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MR. WEINBERG: Your Honor, I'm going  
to object to this unless some time and date be  
set forth.

THE COURT: Sustained.

Q When for the first time did this thing ap-  
pear for trial, would you check?

A The records indicate that a subpoena was  
sent the first time on May 21, 1965.

Q And at that time was the witness William  
Brown subpoenaed?

A Yes, according to these records.

Q He was subpoenaed at that time?

A Yes, sir.

Q Was he resubpoenaed at a later date?

A Yes, he was subpoenaed again on September  
13, 1965.

Q And was he actually subpoenaed on that day?

A Yes, sir.

Q At 700 Park Avenue, Long Beach?

A I believe so.

Q And the case did not go to trial on either

1 of those instances?

2 A No.

3 Q Did there come a time thereafter that he  
4 was subpoenaed?

5 A Yes, he was again subpoenaed in July, on  
6 July 6, 1966.

7 Q I see. And at that time was he actually  
8 subpoenaed?

9 A No, the subpoena for July 6th was returned  
10 with information--

11 Q Where was he attempted to be served, sub-  
12 poenaed at that time?

13 A At 700 Park Avenue, New York City.

14 Q Did you ascertain at that time that William  
15 Brown no longer lived at 700 Park Avenue, Long Beach?

16 A This was where he worked, if I get this cor-  
17 rectly. This was where he worked. He was not at this  
18 address and this was a garage. They would not give me  
19 any other address. That was the only address we had for  
20 him, 700 Park Avenue, at that time.

21 Q So at that time he was unable to be subpoenaed,  
22 is that correct?

1 A Yes.

2 Q What other attempts were made, or what other  
3 effort were made to attempt to subpoena the witness  
4 William Brown?

5 A Through telephone calls and additional sub-  
6 poenaes. None of them were to any avail.

7 Q And as a result of your investigation what  
8 information did you receive as to the whereabouts of  
9 William Brown?  
10

11 A Well, eventually we found another address in  
12 the Bronx.

13 Q What address?

14 A 835 Trinity Avenue, Bronx, New York.

15 Q Was an attempt made to subpoena him at that  
16 address?  
17

18 A Yes, there were.

19 Q Was it ascertained whether or not he was at  
20 this address?

21 A We could not locate him at that address. Our  
22 information indicates we couldn't find him.

23 Q Did they check to ascertain whether or not--  
24 the process check to ascertain whether or not he had left  
25

1 any forwarding address?

2 A Yes, we did try the post office and we  
3 could not get any information from them.

4 Q In turn--besides the process server did  
5 you cause another investigation to be conducted by the  
6 detective who was handling the case--that is, Detective  
7 Altomare?  
8

9 A Yes.

10 Q And you of your own knowledge don't know  
11 what the result of that investigation was, is that cor-  
12 rect?

13 A No, sir. That address of 835 Trinity Avenue  
14 was given to us by Detective Altomare and we continued  
15 from that point on.  
16

17 Q I believe you testified the last time he  
18 was actually served was September, 1965?

19 A I believe that is correct. September of 1965.

20 Q Since that time do your records indicate  
21 how many times the D.A.'s office attempted to locate this  
22 person?  
23

24 A Five times, with actual subpoenas out five  
25 times, and there were many other telephone calls.

1 Q And all of the investigations indicated no  
2 one could find the whereabouts of the witness Brown?

3 A Correct.

4 MR. DOOLITTLE: I have no further  
5 questions.

6 CROSS EXAMINATION

7 BY MR. WEINBERG:

8 Q Mr. Fabian, did you at any time personally  
9 talk with Mr. Brown?

10 A No, sir.

11 Q So that everything you've reflected is what  
12 transpired in your office but you have no personal know-  
13 ledge of any of this, is that true?

14 A Yes, I do have some personal knowledge of  
15 this.

16 Q Then you served William Brown with a subpoena  
17 once and then you served him again in 1965?

18 A That's correct.

19 Q That's reflected on your record, is that  
20 correct?

21 A It is reflected on the records that we  
22 served, that he was served with a subpoena in 1965.  
23  
24  
25

1 Q On two different occasions, is that correct?

2 A Yes.

3 Q Now subsequent to the two different occasions  
4 that William Brown was served with subpoenas did you have  
5 any personal conversation with William Brown subsequent  
6 to September, 1965?

7 A I never did, no.

8 Q Now in conducting this investigation do you  
9 have any memory of telephone numbers that were ever given  
10 to you by William Brown in your paper that you're reading  
11 there?

12 A I don't know whether any of these numbers  
13 were given by William Brown.

14 Q When William Brown was served with a sub-  
15 poena to appear at Court, one of your men served him with  
16 a subpoena, is that correct?

17 A Yes.

18 Q Do you know whether he had a conversation  
19 with Brown as to what date to show up, how to get in  
20 touch--was there any method employed between your office  
21 and William Brown when he was supposed to come into the  
22 courtroom?  
23  
24  
25

Fabian-for the People-cross

1           A       I would assume that the usual procedure of  
2 gathering the name, address and telephone number of the  
3 individual would be--

4           Q       Do you have that in front of you there  
5 today?

6           A       Yes.

7           Q       Do you have the name, address and telephone  
8 number of that man?

9           A       Correct.

10          Q       As of what date do you have the name, ad-  
11 dress and telephone number?

12                   THE WITNESS: As of what date?

13                   MR. DOOLITTLE: Yes.

14          A       The first address as of May 21, 1965.

15          Q       And when is the last one that you have

16          A       That would be--let me check--the exact date  
17 when the address was 835 Trinity Avenue. I don't have that  
18 date listed, but that was after--that would have been  
19 after July of 1966.

20          Q       Now on September 13, 1965 I think you stated  
21 that you served a subpoena on William Brown, is that  
22 correct?

23                   /

1 A No, I did not.

2 Q Somebody served a subpoena on William Brown

3 --I think it was September 13th of 1965, correct?

4

5 A Correct.

6 Q Did you get an address for him as of that

7 date?

8 A That is still the 700 Park Avenue.

9 Q Did you have a telephone number there?

10 A Two of them.

11 Q For that address?

12 A Yes.

13 Q May I have those telephone numbers?

14 A Yes. TR 9-4134 and RH 4-7750. They're both

15 212 exchanges.

16

17 MR. WEINBERG: No further questions.

18 MR. DOOLITTLE: Thank you.

19 THE COURT: May I ask a question? I

20 understand one address to have been recited 700 Park

21 and a subsequent reference to this in Long Beach.

22 MR. DOOLITTLE: It's New York City,

23 THE COURT: Then Long Beach was wrong.

24 MR. DOOLITTLE: I've got Long Beach on

25

1 my mind.

2 THE COURT: All right. Let's proceed.

3 MR. DOOLITTLE: I call Detective  
4 Altomare.  
5

6 DETECTIVE C A R M A N A L T O M A R E,  
7 Shield 35, 4th Squad, Nassau County Police Depart-  
8 ment, called as a witness on behalf of the People,  
9 and having first been duly sworn, testified as fol-  
10 lows:

11 DIRECT EXAMINATION

12 BY MR. DOOLITTLE:

13 Q Now, Detective Altomare, in the course of  
14 your duties as a detective in the Nassau County Police  
15 Department attached to the 4th Squad were you in charge  
16 of the case of People against Sebastian Rossilli?  
17

18 A Yes.

19 Q That's your case, is that correct?

20 A Yes.

21 Q At some time prior to today did you get a  
22 call from the D. A.'s office requesting assistance in lo-  
23 cating the witness, William Brown?  
24

25 A Yes.

1 Q Can you tell me approximately when you got  
2 that?

3 A I believe it was the end of October of be-  
4 ginning of November, of 1966.

5 Q Did you make an attempt to ascertain the  
6 whereabouts of William Brown?

7 A Yes, sir, I did.

8 Q Incidentally, prior to this time did you  
9 know where William Brown lived?

10 A Yes, sir.

11 Q What was his address?

12 A Prior to that time, Trinity Avenue, in the  
13 Bronx.

14 Q Did you know where he worked?

15 A He worked at 700 Park Avenue, New York City.

16 Q Now will you tell me once you got this ques-  
17 tion from the D. A.'s office what efforts, if any, you  
18 made to ascertain the whereabouts of the witness, William  
19 Brown? Tell us everything you did.

20 A First thing I did, I called his employer, Mr.  
21 Minskoff at 700 Park Avenue, New York City. I spoke with  
22 his secretary who I had dealt with before and she told me  
23  
24  
25

1 Brown wasn't working with them any more; she doesn't  
2 know where he could be located. I then called the old  
3 telephone number in the Bronx. I was told he did not  
4 live there any more.

5 Q Did you inquire as to whether or not he left  
6 a forwarding address?

7 A I asked if there was any way I could contact  
8 him and they said he did not leave any address where he  
9 could be located.

10 Q What did you do then?

11 A I then contacted the Board of Elections in  
12 the Bronx. I spoke to a Mr. Printy and he checked his  
13 records dating from 1956 to 1966, with negative results.

14 Q There was no William Brown given--in other  
15 words this William Brown was not registered as a voter?

16 A No, sir.

17 Q So you got no address of his whereabouts?  
18 Did you actually visit his home?

19 A I did not, no, sir.

20 Q Did somebody in the Detective Bureau?

21 A I believe so.

22 Q Do you know who that was?

23  
24  
25

1 A No, I don't know.

2 Q Did you ascertain the results of the actual  
3 visit to his home?  
4

5 MR. WEINBERG: Objected to, as the  
6 best evidence would be that of the witness who  
7 visited the home.

8 THE COURT: Sustained.

9 Q What else did you do?

10 A I checked the telephone directory with  
11 negative results.  
12

13 Q What else did you do?

14 A I believe that's about what I had done, sir.

15 MR. DOOLITTLE: No further questions.

16 CROSS EXAMINATION

17 BY MR. WEINBERG:

18 Q Detective Altomare, you've stated that you've  
19 done the following things and nothing further, is that  
20 correct: one, you spoke with the Minskoffs; two, you  
21 called his home; three, you checked the address; four,  
22 you called the Telephone Company, and five, you checked  
23 with the Board of Elections, is that correct?  
24

25 A I did not check with the Telephone Company.

1 I checked the telephone directory.

2 Q These are all the things you did?

3 A Yes.

4 Q And they were all done from Nassau County,  
5 were'nt they?  
6

7 A Yes.

8 Q Now, prior to September of 1966 you knew  
9 William Brown, did you?

10 A Yes.

11 Q You had talked with him before?  
12

13 A Yes.

14 Q William Brown respected you, didn't he?

15 MR. DOOLITTLE: Objection.

16 THE COURT: Sustained.

17 Q Were you present when William Brown testi-  
18 fied upon a felony hearing?

19 A Yes.

20 MR. WEINBERG: No further questions,  
21 your Honor.

22 MR. DOOLITTLE: I call Detective  
23 Koehler.  
24  
25

1 DETECTIVE E D W A R D F. K O E H L E R ,  
2 Shield 108, 4th Squad, Nassau County Police De-  
3 partment, having been called as a witness in be-  
4 half of the People, and having been duly sworn,  
5 testified as follows:  
6

7 DIRECT EXAMINATION

8 BY MR. DOOLITTLE:

9 Q Detective Koehler, in the course of your  
10 duties as a detective of the Nassau County Police Depart-  
11 ment--you're a detective attached to the 4th Squad, did  
12 you have occasion to attempt to ascertain the whereabouts  
13 of William Brown?  
14

15 A Yes, sir, I did.

16 Q Did you know William Brown?

17 A I knew him--I saw him, sir.

18 Q Will you tell me when you started to make  
19 your efforts, what efforts you made and what was the  
20 result of those efforts?

21 A In the latter part of October or beginning of  
22 November I made several attempts to locate a William Brown.  
23 I contacted the New York Telephone Company and discussed  
24 it with their business office and attempted to have them  
25

1 check the phone number for me. They come back with  
2 negative results that there was no telephone number at  
3 that address listed to a William Brown.  
4

5 THE COURT: What address are you  
6 talking about?

7 THE WITNESS : The Trinity Avenue,  
8 Bronx, address, your Honor.

9 A (continued) I further checked with the uti-  
10 lity companies, Con Edison Company for any business file  
11 on such a William Brown at that address and attempted to  
12 locate a forwarding address. That also came back with  
13 negative results. No William Brown at that address with  
14 their company. I then contacted the Postal Department and  
15 contacted the office serving his area and speaking with  
16 both the mail carrier for the route and the men in charge  
17 at the time I was there checking. That also come back  
18 negative, that they knew of no William Brown and checking  
19 their records for approximately one year prior to my re-  
20 quest of this October, November, 1966. Likewise, they had  
21 no forwarding address for any William Brown.  
22  
23

24 Further, I checked with the records that the  
25 Post Office had for a William Brown at that address and

1 they had several Browns. I had contacted --I had oc-  
2 casion to contact the phone number listed for William  
3 Brown and by chance the party that answered the phone  
4 was a Mary Brown and I said, "Are you any relative or  
5 any connection with William Brown?" and she said no, but  
6 that she did know of him and that she had not seen him  
7 for approximately three months prior--

8  
9 MR. WEINBERG: Objected to as hearsay.

10 MR. DOOLITTLE: Your Honor, this is a  
11 hearing.

12 THE COURT: I think I have to take that  
13 hearsay, regarding it as such, of course.

14  
15 A (continued) That's about the extent of my  
16 inquiries on William Brown.

17 Q Did you attempt to check him through Social  
18 Security?

19 A Social Security? No, sir, I personally did  
20 not.

21 Q Were you aware of an attempt made to check  
22 through Social Security?

23  
24 A They were going to try to see if they could  
25 have by some means, by someone check it through the

1 Social Security system, but the results of that, I have  
2 no knowledge.

3 Q Are you aware of the fact that Social Se-  
4 curity does not divulge information to anybody?

5 MR. WEINBERG: Objection, your--

6 BY MR. WEINBERG:

7 Q All of your efforts were made in Nassau  
8 County, is that correct?

9 A That is correct, with one exception. When  
10 I was in New York City on another assignment I stopped at  
11 the postal department to make inquiries concerning William  
12 Brown.

13 Q Detective Koehler, assuming you wanted a  
14 check on me and my address was 700 Park Avenue and I was  
15 a defendant to be brought in here, would you make the  
16 same type of check?

17 THE WITNESS: In what regard?

18 Q If you wanted me to be brought into the  
19 courtroom today would you have used the same means that  
20 you employed here to ascertain whether I was at 700 Park  
21 Avenue, New York City?

22 A I'd have to use those facilities to attempt  
23  
24  
25

1 to locate you.

2 Q That would be your sole facilities?

3 A As far as my assignment.

4 Q You wouldn't go to the place?

5 MR. DOOLITTLE: That's improper. The  
6 process servers have testified that he was at-  
7 tempted to be served at the premises. In other  
8 words, the visit to the premises.

9 THE COURT: I'll allow it.

10 A My part of the assignment was to attempt to  
11 locate by checking at the post office section and the  
12 telephone company and the business utilities.

13 Q Do you have any records here to reflect what  
14 you did?

15 A No.

16 Q It's all in your head?

17 A That's correct, because I gave my investi-  
18 gation results to Detective Altomare and the sargeant.

19 MR. DOOLITTLE: I have no further ques-  
20 tions, your Honor. I think that's the People's  
21 case, except I will ask counsel to concede --I  
22 think he has a copy of the felony minutes--that  
23  
24  
25

1 this is an accurate transcription of the felony  
2 minutes and William Brown gave his address on  
3 the felony hearing as 700 Park Avenue, New York.  
4

5 MR. WEINBERG: If I could be heard on  
6 a motion--

7 THE COURT: Just a minute, please.  
8 People rest?

9 MR. DOOLITTLE: People rest.

10 THE COURT: Defendant rests?

11 MR. WEINBERG: Yes, your Honor.

12 THE COURT: All right.

13 MR. WEINBERG: Your Honor, as I heard  
14 the testimony that was adduced here this morning  
15 it is manifest to me that there has been no due  
16 diligence employed by the D.A.'s office in this  
17 matter in that the following, at best, is the  
18 testimony--the first gentleman who testified was  
19 not fully conversant with what transpired. He  
20 was not the process server. He was merely a clerk  
21 in charge of the office. He had no knowledge,  
22 personal knowledge of anything having occurred at  
23 700 Park Avenue and at this point nobody's testified  
24  
25

1           that they were present at 700 Park Avenue. Not  
2           one witness testified to that. Number two, the  
3           perfunctory type of investigation that was con-  
4           ducted by each of these police officers could  
5           have been conducted from a telephone out here in  
6           Nassau County--they've stated that they conducted  
7           it all from Nassau County with the one exception  
8           with Detective Koehler who was in New York on a  
9           different matter and stopped in to check upon  
10          something. No records have been produced here.  
11          No witness testified he checked with the superin-  
12          tendent of the building or neighbors in the build-  
13          ing that they went physically to the buildings.  
14          This is all conjecture.

15  
16  
17           THE COURT: Which building?

18           MR. WEINBERG: 700 Park Avenue.

19           THE COURT: That was a garage--

20           MR. WEINBERG: And nobody was at  
21           either 700 Park Avenue or 835 Trinity Avenue. Not  
22           one witness has testified to that.

23           THE COURT: I think you're correct about  
24           whatever the number was at Trinity Avenue in the  
25

1 Bronx. That was a residence, but I'm pointing 27  
2 out the different situation between a residence  
3 and a business.  
4

5 MR. WEINBERG: I agree with the Court.  
6 I stated at this point my objection to this being  
7 let in at the trial, if it be such, is that there  
8 had been no due diligence employed by the police  
9 department. The only thing that the police de-  
10 partment has done is to state they have not been  
11 able to find someone predicated upon testimony--  
12 I mean telephonic information. If the police  
13 department wanted to apprehend a criminal they  
14 most assuredly would go to the situs where that  
15 criminal was, whether it be his home, his place  
16 of employment--. In this particular case I be-  
17 lieve the gravamen of the entire case, the nub  
18 of the whole case is predicated upon the testimony  
19 of one Brown, of William Brown and on the flimsy  
20 evidence that's been adduced here today, I don't  
21 think that the diligence required by the statute  
22 has been shown.  
23  
24  
25

MR. DOOLITTLE: May I correct one

1       misapprehension that I think Mr. Weinberg has?  
2       I think Mr. Fabian testified--and if he did not  
3       so testify I'll recall him--that an attempt was  
4       made to serve this man at 700 Park Avenue and an  
5       attempt was also made to serve him at the Trinity  
6       place. I know this for a fact. If he did not so  
7       testify, I'll recall him for that purpose.

8  
9       Now, this is a hearing, your Honor. I  
10      could produce Mr. Voollens, who had to go out this  
11      morning. This is his testimony. He's the actual  
12      process server who handles the Bronx, and--

13               THE COURT: Personally, I think he  
14      ought to be produced.

15               MR. DOOLITTLE: I couldn't get him  
16      this morning because he was out serving subpoenas  
17      in New York and in the Bronx, but possibly when  
18      he calls in--we can hold the hearing off in the  
19      meantime.  
20

21               THE COURT: One thing I don't recall  
22      hearing in the testimony was where this Trinity  
23      Avenue address came from. It just appears as an  
24      address, that somebody said was an address.  
25

1 MR. DOOLITTLE: I think Mr. Fabian--

2 THE COURT: There's no testimony as  
3 to where that came from and no testimony anyone  
4 actually went there. Another criticism I have of  
5 the testimony as Mr. Fabian gave is that he was  
6 simply reciting something that was hearsay and  
7 there was no foundation laid for its being pro-  
8 duced.  
9

10 MR. DOOLITTLE: I thought--this is a  
11 hearing and in fact in a hearing I don't think  
12 the rules against hearsay apply as they would on  
13 a trial.  
14

15 THE COURT: I don't know that it's as  
16 broad as that but I do relax the rules considerably  
17 in a situation like that, but statements, we don't  
18 allow somebody to just take the stand and state,  
19 "I think this is what happened" or "I think that's  
20 what happened". You have to know--

21 MR. DOOLITTLE: He was saying from the  
22 records of the D.A.'s office which he had in his  
23 hand--he was reading from the record.  
24

25 THE COURT: All he said was that the

1 records indicate this and the records indicate  
2 that.

3 MR. DOOLITTLE: Isn't there testimony,  
4 though, that--

5 THE COURT: I don't think the founda-  
6 tion was laid for it.  
7

8 MR. DOOLITTLE: I don't see what foun-  
9 dation would have to be laid, your Honor, except  
10 if you want me to reproduce Mr. Fabian to establish  
11 that is the business--

12 THE COURT: I certainly think it should  
13 have been done.  
14

15 MR. DOOLITTLE: I didn't think it  
16 would be necessary in a hearing.

17 THE COURT: And then these are sub-  
18 poenas issued by--and some effort is made to  
19 deliver them, but I don't know what the effort  
20 was.

21 MR. DOOLITTLE: I can also produce  
22 Mr. Voolens.  
23

24 THE COURT: I think that's necessary.

25 MR. DOOLITTLE: I can also produce the

1 notations that Voolens made on the subpoenas  
2 which are part of the records of the D.A.'s office  
3 I can bring Mr. Fabian back up again and re-produce  
4 him and if the Court wants to adjourn this un-  
5 til, say tomorrow morning and proceed to pick  
6 a jury and continue the hearing tomorrow morn-  
7 ing.  
8

9 THE COURT: I will do that, yes, and  
10 we'll proceed with Mr. Fabian and the other  
11 witnesses.  
12

13 MR. DOOLITTLE: Just Fabian. I had  
14 three witnesses and you produced three--Fabian,  
15 Altomare--  
16

17 THE COURT: Are you going to produce  
18 Voolens?  
19

20 MR. DOOLITTLE: I can produce him to-  
21 morrow.  
22

23 THE COURT: You can produce Fabian  
24 right now. 9:30, everybody be here and ready.  
25

MR. DOOLITTLE: I can produce Fabian  
right now and get him out of the way. In fact,  
maybe I can get Voolens back this afternoon.

FILED IN 100-100000  
EX-100

1 THE COURT: After we pick a jury.

2 MR. DOOLITTLE: I doubt we will complete  
3 the selection of a jury today, but I think I  
4 can get Fabian back now. Will you hold it a  
5 second.  
6

7 THE COURT: Mr. Doolittle is going to  
8 examine Mr. Fabian. Any objection?

9 MR. WEINBERG: No objection.

10 ( Leonard Fabian, having been previously  
11 sworn, resumed the stand and testified  
12 as follows:)  
13

14 REDIRECT EXAMINATION BY MR. DOOLITTLE:

15 Q During the course of your testimony you  
16 were looking at a card, is that correct?

17 A Yes.

18 Q Is this in the regular course of the D.A.  
19 for process servers to maintain such a card?

20 A Yes.

21 Q And is that card maintained by the D.A.'s  
22 process server in the regular course of their business?

23 A Yes.

24 Q That is, in fact, how you keep control of  
25

1 the cases as far as subpoenaing witnesses?

2 A Yes.

3 Q Can you look at that card and does it  
4 indicate to you whether or not Walter Vooléns was the  
5 actual process server in this case?  
6

7 A Yes, sir, I can, by looking at the sub-  
8 poena that was returned by Mr. Vooléns.

9 THE COURT: Now he's testifying from  
10 a subpoena and we have to get that subpoena into  
11 evidence.  
12

13 MR. DOOLITTLE: I'm not going to  
14 put anything into evidence yet. I don't think I have  
15 to, at this point. If he wants to put it into evidence  
16 that's allright.

17 THE COURT: Well, the testimony or  
18 the evidence is the record, not what he knows.  
19 He can't testify.  
20

21 MR. DOOLITTLE: I'm merely estab-  
22 lishing, Judge, that this is a record kept in the  
23 regular course of business.

24 THE COURT: But then, you're talking  
25 about the card. All you were talking about was

1 the card. Then he asked him, can he, and he  
2 referred to the back of a subpoena, which was  
3 not the card. I'm pointing out he's not tes-  
4 tifying from his own knowledge--that he was  
5 testifying from the record. If the testimony  
6 is to come in, the record will have to come in.  
7

8 MR. DOOLITTLE: All right. I'm not of-  
9 fering this into evidence.

10 THE COURT: Then I want to try to avoid  
11 his giving testimony which he's not supposed to  
12 give because he doesn't know what he's talking  
13 about. I don't say that--  
14

15 MR. DOOLITTLE: Excuse me, your Honor--  
16 I don't understand the Court's reasoning. This witness  
17 has testified and during the course of his testimony he  
18 looked at certain papers, one of which was a card. Now  
19 I think it's material. I think the Court has pointed  
20 out it's material and germane for me to establish the  
21 fact that the cards he looked at are records kept in  
22 the regular course of business. I don't care to offer  
23 them into evidence at this time because there are other  
24 witnesses on there which I don't want to disclose to  
25

1 the defendant, frankly.

2 THE COURT: Well, it seems to me, Mr.  
3 Doolittle, that there are two ways of using  
4 papers. One is to introduce them in evidence  
5 and the other to refresh recollection. If he  
6 is testifying from a refreshed recollection,  
7 we should establish that he knows what he's  
8 talking about.  
9

10 MR. DOOLITTLE: He has established that  
11 he's in charge. He's the one who has drawn  
12 up the subpoena.  
13

14 THE COURT: But unless it's something  
15 he has personal experience with, he can't tes-  
16 tify about it. You can only introduce the  
17 records for that purpose, or you can get the  
18 testimony from the person who knows about it  
19 personally. If you are going to have him tes-  
20 tify from these records, they have to be  
21 introduced into evidence and then he doesn't  
22 even need to testify because they're in evi-  
23 dence, but he can point out what they signify.  
24  
25

1 MR. DOOLITTLE: I don't follow the  
2 Court's reasoning.  
3

4 THE COURT: I'll try to explain it. I  
5 still don't--I'll go over it again. I think  
6 we should all understand each other. If I'm  
7 wrong, I would welcome being straightened out.  
8

9 Mr. Fabian is attempting to testify  
10 about things of which he has no personal know-  
11 ledge. He can't do that, but you want to get  
12 that in by virtue of the business record ex-  
13 ception to the hearsay law. To do that, it must  
14 be introduced into evidence. It doesn't permit  
15 him to say, "our records show this", without  
16 those records in evidence. He can't do this  
17 unless--  
18

19 MR. DOOLITTLE: If that's the Court's  
20 ruling.  
21

22 THE COURT: Do you find any fault?  
23

24 MR. DOOLITTLE: I don't agree.  
25

THE COURT: That means--what's the basis  
of your disagreement?

MR. DOOLITTLE: I think that this witness

1 is testifying from personal knowledge. I  
2 also say he is testifying from things he was  
3 told, but this being a hearing, I think that  
4 is the rule in a hearing.  
5

6 THE COURT: I'll tell you this; if he  
7 testifies from things that somebody told him,  
8 I don't think--I may take it, but it isn't  
9 going to be sufficient to sustain a burden of  
10 proof.

11 MR. DOOLITTLE: I'm going to produce  
12 Voolens.  
13

14 THE COURT: You are now, because I in-  
15 sisted on it.

16 MR. DOOLITTLE: I don't agree with the  
17 Court that it's necessary, but I'll produce him.

18 THE COURT: I want to make it clear, and  
19 without any purpose of criticism, I don't feel  
20 it is sufficient for Mr. Fabian to get up and  
21 say this and this happened when he doesn't  
22 personally know that it happened. All he knows  
23 is what somebody told him. That's not sufficient,  
24 from my point of view, but you can bolster that  
25

1 if you wish by producing the business records  
2 and putting them into evidence, but not by  
3 just having him say--  
4

5 MR. DOOLITTLE: Rather than putting the  
6 business records in evidence, your Honor, be-  
7 cause there are certain matters on there--in  
8 other words, all the witnesses contained in  
9 this case are contained on that card--for se-  
10 curity reasons I don't intend to put that in  
11 evidence.  
12

13 THE COURT: If that is a serious prob-  
14 lem, there are ways we can get around it by  
15 extracting the portions and deeming the actual  
16 records to be in evidence. I'm sure--Mrs.  
17 Weinberg seems to be agreeable. He'll go  
18 along with us.  
19

20 MR. DOOLITTLE: If I can do this, your  
21 Honor, if I can deem in evidence those portions  
22 read which are germane only to William Brown.  
23 The trouble is, if it's offered into evidence  
24 physically, there are certain writings that  
25 overflow other writings. The card is so big--

1 THE COURT: All right. That's a good  
2 solution. We'll read from the business records,  
3 but first they have to be offered and received and  
4 deemed to be in evidence.

5 REDIRECT EXAMINATION (continued)

6 BY MR. DOOLITTLE:

7 Q Let me ask you this, Mr. Fabian, we've  
8 talked about records here. One of those records is this  
9 case card, a subpoena card, is that correct?

10 A Yes.

11 Q And is this what you refreshed your recol-  
12 lection with?

13 A Yes.

14 Q In addition to that case card, are there other  
15 records which are kept in the regular course of business by  
16 the D.A's office, and as part of the D.A's office it's pos-  
17 sible to keep such records in the regular course of busi-  
18 ness in addition to the card?

19 A Yes, the subpoena.

20 Q Now when a subpoena is served do you annex  
21 it to the card? Does it become part of the record?

22 A We keep the subpoena because of the lack

4  
5 Q Now I believe you made certain calls your-  
self?

8 Q Would you tell me what telephone and what ad-  
9 dress you made a call to, and when?

19 MR. DOOLITTLE: I've reopened. I'm  
20 sure the Court isn't going to preclude me from  
21 bringing out the facts and what efforts were made.  
22

24 Q Who made the phone calls--when were they  
25 made and to what address were they made?

NOTED COMMENT

1           A           I made--the exact dates of the phone call  
2 that I made to the numbers at 700 Park Avenue I don't  
3 have, but I made telephone calls to these two numbers se-  
4 veral times during the past year, at 700 Park Avenue.

5           Q           1966?

6  
7                   MR. WEINBERG: Objection, your Honor,  
8 as the answer is in generalities, not specific, and  
9 at the same time, your Honor, this witness has tes-  
10 tified before, set forth two telephone numbers.  
11 There was no testimony--I have the two numbers,  
12 TR 9-4134 and RH 4-4750. That was on cross examina-  
13 tion. There's been no testimony here that this man  
14 made telephone calls within the last year until  
15 now, and he hasn't set forth any times or any places  
16 and he doesn't have it marked down on his card.  
17 He's not even refreshing his recollection and the  
18 card is not in evidence, even those portions that  
19 are deemed to be marked in evidence.  
20  
21

22                   THE COURT: Before we go ahead on that  
23 perhaps we'd better get into evidence what is sup-  
24 posedly in evidence.

25                   MR. DOOLITTLE: I ask that that portion

1 of the card--the problem of this, your Honor, is  
2 the fact that counsel is permitted to see this  
3 card prior to it being deemed marked in evidence  
4 and there is a certain matter I don't think coun-  
5 sel should be permitted to see in this case.  
6

7 THE COURT: I thought we might handle  
8 it by you offering it and before it's accepted  
9 we'll have Mr. Fabian read such parts as you are  
10 offering.  
11

12 MR. DOOLITTLE: Of course, counsel has  
13 a right to check me to see whether I'm being  
14 honest with the Court. I think the Court knows  
15 I will be honest but I don't want to deprive him  
16 of the right to see if I'm doing it correctly.  
17

18 THE COURT: Mr. Doolittle, you're only  
19 offering certain parts?  
20

21 MR. DOOLITTLE: Only those portions as  
22 to William Brown and I will offer any portion of  
23 those records which indicate any efforts made to  
24 subpoena the witness William Brown, I ask be deemed  
25 marked in evidence now and be read by Mr. Fabian  
as to what it says--

1 not his interpretation, but what the actual  
2 records indicate.

3 THE COURT: Well, are you agreeable  
4 to our trying that, and then we'll see if you  
5 have any objection after--  
6

7 MR. WEINBERG: Your Honor, I'm not  
8 trying to impede this hearing and I'm amenable  
9 to that but I would like--that was the basis of  
10 my objection. I don't know what is in evidence  
11 and what isn't. That would be a proper method.  
12

13 THE COURT: All right.

14 DIRECT EXAMINATION (continued)

15 Q Would you read from the record that portion  
16 thereof--and by the "record", I mean the card, any subpoena  
17 or any notations that you might have there which are part  
18 of the records kept in the regular course of business by  
19 the D.A.'s office--what appears there relative to, or any  
20 thing that appears relative to the witness William Brown.  
21

22 A "William Brown, 700 Park Avenue, Manhattan,  
23 212 TR 9-4134; 835 Trinity Avenue, Bronx, 212 665-2455;  
24 the name Phyllis Collins (and Phyllis Collins is not a  
25 witness) has not seen Brown in over a year." That's at

1 the 21665 2455 telephone call made today.

2 MR. WEINBERG: What dates are--

3 A 1/17/67.

4 THE COURT: Read each date which re-  
5 fers to any of the entries. Let's go back again.

6 MR. DOOLITTLE: Well, I'm familiar  
7 with the card and the Court will see it. The face  
8 of the card --this is a rather informal proceeding--  
9 but the face of the card is more or less merely  
10 the name and address of the witness. On the rear  
11 of the card--

12 THE COURT: Of the defendant, you mean.

13 MR. DOOLITTLE: Of the defendant, your  
14 Honor. On the rear they have the notations as the--  
15 as to when it was served, and--

16 THE COURT: Is there any date opposite  
17 Phyllis Collins?

18 THE WITNESS: Yes, with two pieces of  
19 information and the date covers both. It also covers--

20 THE COURT: What date?

21 THE WITNESS: 1/17/67.

22 THE COURT: That's today's date?

23

24

25

1 THE WITNESS: Yes, sir.

2 THE COURT: Would you give me that again?

3 THE WITNESS: "Witness has not seen Brown  
4 in over a year and check Bronx post office and re-  
5 fused information." I checked the post office for  
6 a possible forwarding address again.  
7

8 Q Is that all the information on the card?

9 A That's right, sir.

10 Q Is there any other indication on the card  
11 showing the dates subpoenas were served or were not served  
12 I don't think you read those into evidence, Mr. Fabian.  
13

14 A Well, I have--subpoenas were served 5/21/65,  
15 9/13/65, 7/6/66, 9/6/66, 9/26/66, 10/21/66 and 12/6/66.

16 Q Now is there any indication whether or not  
17 all of the subpoenas were served or do the records indi-  
18 cate that only certain of those subpoenas were served?  
19

20 A Well, certain of those subpoenas were served.

21 Q Which ones do the records indicate were ac-  
22 tually served?

23 A 5/21/65 and 9/13/65, we know of. The rest,  
24 starting 7/6/66 a subpoena was sent to the 700 Park Ave-  
25 nue address in New York City and the information there is,

1 "Left this place January 2, 1966" and then the phone num-  
2 bers of 212 TR 9-4134 and RH 4-4750 .

3 Q Do you recognize the handwriting?

4 A Yes. This is Mr. Voolens' handwriting. His  
5 signature is on the back and also says "Brown left place  
6 of employment January, 1966, date unknown" and the date he  
7 brought that himself was on June 23, 1966.

8 Q I see. Are there any other--

9  
10 THE COURT: Excuse me just a moment. I  
11 don't understand that. The date he brought what?

12 THE WITNESS: He took the subpoena to  
13 the place. We subpoena the case in advance. The  
14 date on the subpoena.

15 THE COURT: Did that match any one of  
16 the list of dates?

17 THE WITNESS: Only that it came before  
18 July 6, 1966. That's in between the dates on the  
19 subpoena that were put down and the dates that they  
20 are to appear.

21 THE COURT: So these dates you've  
22 given are return dates of the subpoenas and not the  
23 dates of the service or issuance?  
24  
25

1 THE WITNESS: Right.

2 Q Whose handwriting is that?

3 A Walter Voolens'.

4 THE COURT: How do you spell that.

5 THE WITNESS: V-o-o-l-e-n-s.

6 THE COURT: Who is he?

7 THE WITNESS: A process server working  
8 for the D.A's office.

9 Q Incidentally, are you familiar with his ter-  
10 ritory?  
11

12 A It's the New York City territory. Manhattan,  
13 Bronx and Brooklyn.  
14

15 Q I see. Are there any other papers or records  
16 kept in the regular course of business by the D.A's office  
17 which refer to efforts made to subpoena the witness, Wil-  
18 liam Brown?  
19

20 A No, I believe that's all, sir.

21 MR. DOOLITTLE: That's all.

22 MR. WEINBERG: May I just get one print  
23 of clarification?

24 RECROSS EXAMINATION

25 BY MR. WEINBERG:

Q As I understand it, the dates 7/6/66, 9/6/66, 9/26/66, 10/21/66 and 12/6/66 are return dates on subpoenas?

A Yes.

Q They're not dates of attempted service, is that correct?

A No, sir.

MR. WEINBERG: No further questions.

BY MR. DOOLITTLE:

Q Let me ask you this; does that indicate to you--is there a procedure that is followed in the D.A.'s office as to serving subpoenas?

A Yes.

MR. WEINBERG: Objected to, as the record speaks for itself, or themselves, and the witness already testified as to what transpired pursuant to the records.

MR. DOOLITTLE: He has personal knowledge, too, your Honor.

THE COURT: No, I would take this as, in effect, indicating what significance these records may have.

1 MR. WEINBERG: Only subject to the man  
2 who was actually supposedly going to serve the sub-  
3 poenas. I could draw five subpoenas and leave them  
4 on my desk--  
5

6 THE COURT: Don't you see--these were  
7 business records and the purpose of getting them in  
8 is that they indicate something. It's not self-  
9 evident, and that's shown by your recent question.  
10

11 I want to find out what they indicate.  
12 I may or may not accept them as proving anything.

13 MR. DOOLITTLE: These records indicate  
14 that attempts were made to serve these subpoenas  
15 prior to the return date of the subpoena.

16 MR. WEINBERG: I object to that, your  
17 Honor. That's not what the record reflected.  
18

19 BY THE COURT:

20 Q Now, tell us, what do these dates mean to a  
21 member of the D.A.'s staff who examines these records for  
22 the purpose of interpreting them?

23 A They would mean to me that this was a sub-  
24 poena sent out and that the individual was supposed--I mean--  
25

Q What does "a subpoena sent out" mean?

1 A A subpoena is given to a process server and--

2 Q The fact that a subpoena is issued for a  
3 certain date, does that invariably mean it's always given  
4 to a process server?  
5

6 A As far as my knowledge, yes, sir. I always  
7 give them to the process server.

8 Q It's never recalled or never disregarded or  
9 never followed up?

10 A Well, in order to make sure that there would  
11 be no inconvenience to witnesses in case a case is not  
12 going on there is a telephone number on there and these  
13 subpoenas go out--  
14

15 Q Getting back to these dates here, this means  
16 that a subpoena was issued and, as far as you're concerned  
17 as an employee of the D.A's staff who is familiar with  
18 these records and interpreting--this means to you that a  
19 subpoena was handed to a process server for the purpose  
20 of serving?  
21

22 A Yes.

23 Q Does that mean anything else?

24 A It means that this is a return date.

25 Q Of the subpoena?

1 BY MR. DOOLITTLE:

2 Q Does it mean whether or not--is there any  
3 indication whether the subpoena was handed out prior to  
4 the return date or after?

5 A No. No, in the normal course of the business  
6 it would be before the return date.

7 Q Have you ever known of a situation where a  
8 subpoena was dated on a return date where its issued after  
9 the return date?  
10

11 A No.

12 Q Let me ask you this. I think you testified  
13 you made a call on January 17th--today's date?  
14

15 A Yes.

16 Q What did you mean--

17 THE COURT: Excuse me. I just want to  
18 clear up the matter of these records and their ad-  
19 missibility.  
20

21 MR. DOOLITTLE: That's the last question  
22 I have of Mr. Fabian.

23 MR. WEINBERG: I'll permit Mr. Doolittle  
24 to ask his question.

25 MR. DOOLITTLE: I'm sure he wants to

1 cross examine on this.

2 THE COURT: I don't like to be techni-  
3 cal, but you're supposed to be getting these records  
4 into evidence.

5 MR. DOOLITTLE: I renew my offer.

6 THE COURT: Have you any objection on  
7 the bases which you discussed?

8 MR. WEINBERG: I object, your Honor.

9 THE COURT: --or do you have any fur-  
10 ther questions.

11 MR. WEINBERG: I have many further  
12 questions.

13 THE COURT: All right.

14 BY MR. WEINBERG:

15 Q Is it always the policy of the D.A's office  
16 when it issues a subpoena for a return date and the sub-  
17 poena is not served, to have that subpoena affixed to the  
18 papers that you have here today?

19 THE WITNESS: If the subpoena is not  
20 served?

21 Q If the subpoena is not served. Will you check  
22 the records you have there now, and tell me --  
23

1 THE COURT: He wasn't answering what  
2 I was trying to clarify--what you said if the sub-  
3 poena was not served.

4 A These subpoenas go out with the process ser-  
5 ver and they either deliver them to the address. If they  
6 are not served they would come back, or they could be left  
7 as notification to telephone the office, and if no telephone  
8 call is made there is no indication on the record that the  
9 individual called back or that he's still at a particular  
10 address to receive the subpoena.  
11

12 Q Now, do you have any subpoenas with you  
13 there now that were not served?  
14

15 MR. DOOLITTLE: Judge, I don't object  
16 to the witness answering, except I think he has to  
17 confine his answer to a yes or no answer. Other-  
18 wise, it will disclose the names of other witnesses.  
19

20 MR. WEINBERG: I'll go down the list  
21 and make a very simple--

22 THE COURT: Do all these dates apply to  
23 William Brown?

24 THE WITNESS: Yes, your Honor.

25 THE COURT: Go ahead.

1 BY MR. WEINBERG:

2 Q Do you have a subpoena that applies to  
3 William Brown that was allegedly returnable on July 6th,  
4 of 1966?

5  
6 A Yes, I do.

7 THE COURT: Excuse me, Mr. Weinberg.  
8 I'm going to recess now and we will resume--we'll  
9 say at four o'clock. I don't know whether we're  
10 going to continue picking a jury or whether we're  
11 going to resume this tomorrow morning, but we'll  
12 decide later this afternoon.

13  
14 MR. WEINBERG: That was four o'clock?

15 THE COURT: Yes, but you'll be back  
16 here to pick a jury at two o'clock.

17 ( A luncheon recess was had and at two o'clock  
18 the hearing was resumed.)  
19

20 MR. DOOLITTLE: Your Honor, just for the  
21 record, the alternate juror, Mr. Mannock is it--just  
22 talked to me. He came up and was chummy and asked  
23 me who was the foreman of the jury, and was it Mr.  
24 --was this it that man--and pointed to Mr. Muns--  
25 and he said, "Thank you" and patted me. That was

1 all that was said, but I know it was done in the  
2 presence of the defendant. That's the alternate  
3 juror.

4 THE COURT: Any objection to the contact  
5 between the D.A. and the alternate juror?  
6

7 MR. WEINBERG: No.

8 MR. DOOLITTLE: I didn't want to embarrass  
9 him when he was here.

10 THE COURT: Mr. Doolittle, I think in the  
11 future it would be better to just cut him off and  
12 say, "Please, this is not permissible" and head him  
13 off.  
14

15 MR. DOOLITTLE: Maybe it's better, if he  
16 comes--I didn't know what he was going to say. I  
17 just said, "Yes".

18 Your Honor, on the continuance of the hearing,  
19 People call Walter Voolens.  
20

21 W A L T E R V O O L E N S , 673 Windsor  
22 Road, Uniondale, New York, having been called as  
23 a witness on behalf of the People and having been  
24 first duly sworn, testified as follows:  
25

1           Q       Mr. Voolens, you're the process server of  
2 the D.A's office assigned to serving processes in the  
3 Borough of Manhattan and theBorough of The Bronx, is that  
4 correct?

5           A       Yes.

6           Q       Did you have occasion to serve subpoenas on  
7 William Brown in the case of People against Sebastian  
8 Rossilli?  
9

10          A       Yes.

11          Q       Did you actually serve them at one time?

12          A       At one time, about 1965, I would say.

13          Q       So did there come some time in 1966 when  
14 you were instructed to serve him again?

15          A       Yes, there was.

16          Q       And were you able to serve him?

17          A       No, sir. When I got to this garage--that's  
18 where I made service--the garage was in the bottom of an  
19 apartment building in New York City--he was a chauffer--  
20 they told me he left the place of employment January 2nd,  
21 because it was right after the New Year, and then we tried  
22 to check out phone numbers and we couldn't do that, and  
23 finally we got some information through the detectives  
24  
25

1 that we may be able to locate him in Trinity Avenue, in  
2 the Bronx.

3 Q Did you go to Trinity Avenue?

4 A I went there, the 835 apartment house, about  
5 thirty families in it, and it's a house that--  
6

7 MR. WEINBERG: Objected to, your Honor,  
8 unless time and date is set forth.

9 THE COURT: Sustained.

10 Q Approximately what date?

11 THE WITNESS: In the Bronx?

12 MR. DOOLITTLE: Yes.

13 A I have to check, because I got--  
14

15 MR. DOOLITTLE: Yes, if the subpoena  
16 will refresh your recollection you may use it.

17 A These are my own notations on this, sir. I  
18 went there on about Wednesday--no, Tuesday, the 5th of  
19 July, 1966.  
20

21 Q Now, I believe you knew what William Brown  
22 looked like?

23 A I recalled from the first time I met him  
24 down in the garage in the chauffeur's uniform.

25 Q You got to the address in the Bronx, Trinity

1 Place. Tell us what you did.

2 A I got there and I walked into the apartment  
3 house and there were no bells, no names on the mail boxes  
4 that were visible. They were all jammed outside--crossed  
5 off, all kinds of other words on these mail boxes. I  
6 went around to the basement and a lot of garbage cans--  
7 I don't remember because I was a little bit scared going  
8 myself and I saw a colored gentleman and I asked him does  
9 he know where Browns live and he said, "I never heard of  
10 the name Brown", and I said, "Who are you" and he said,  
11 "I'm one of the custodians or superintendents of the  
12 building", and he said that in these particular apartments  
13 there is more than one family. "You may have the wrong  
14 family", or something like that, so I said, "What can I  
15 do?" and he said I might as well start checking.

16 I checked the first two floors, rang door-  
17 bells and, your Honor, if I actually say what I want to say--  
18 I stick out like a sore thumb in the apartments that I  
19 was going to and they wouldn't cooperate whatsoever be-  
20 cause these people were of a different race, and I was--

21 Q All colored, mostly?

22 A Yes, sir.

1 Q Did you ever find out where William Brown  
2 was?

3 A No, sir. I then waited outside and I think  
4 I recall it was about 3:30; then the mail man came and I  
5 asked him does he deliver mail to William Brown, and he  
6 said, "I'm not allowed to give you that information",  
7 and I asked him could he please--I told him where I was  
8 from and he said, "I don't recall any William Brown and  
9 I don't recall any William Brown mail coming and I don't  
10 have any today", so when he opened the mail box I asked  
11 him, "Can I look", and he said, "That's government pro-  
12 perty and I can't let you look". I went to the house next  
13 door and I asked --as soon as I got to the door I asked  
14 this fellow--he said he was a superintendent--that's what  
15 he told me. He didn't know anything about Brown, and I  
16 reported to the office, to our office and they said they  
17 didn't want me to go, to be going up Trinity Avenue look-  
18 ing for Brown when I can't find him at that address at  
19 835 or 839--they're right next to each other.

23 Q You checked the two apartments--

24 A Yes.

25 Q And you knew what he looked like?

1 A I knew from the first time I met him.

2 Q On any of the doorbells, did he ever answer  
3 any of the doorbells?

4 A No, sir.

5 Q Did you see him in the neighborhood at all?

6 A No.

7 Q And nobody ever heard of him, is that correct?

8 A No, sir.

9 Q Did you make any other efforts to find him?

10 A Now, I believe our office checked several  
11 times on that whole--

12 MR. WEINBERG: Objected to. Only as to  
13 what this witness did.

14 THE COURT: Sustained.

15 MR. DOOLITTLE: I have no further ques-  
16 tions.

17 CROSS EXAMINATION

18 BY MR. WEINBERG:

19 Q Mr. Voolens, is that how you pronounce your  
20 name?

21 A Yes.

22 Q You went to a place in the Bronx on Trinity

1 Avenue?

2 A Yes.

3 Q Do you have any memoranda reflecting how you  
4 acquired information to go to Trinity Avenue?  
5

6 A Sir, the only thing I can tell you is that  
7 I believe the detectives may have checked this out.

8 Q But you didn't get the address originally?

9 A No.

10 Q And you don't know whether Brown even lived  
11 on Trinity Avenue?

12 A I was given a subpoena to serve.  
13

14 Q On Trinity Avenue?

15 A Yes.

16 Q You served the subpoena originally at Trinity  
17 Avenue?

18 A No, sir.

19 Q Where did you serve the first subpoena?  
20

21 A New York City.

22 Q Where?

23 A 700 Park Avenue, in the basement of the  
24 garage.

25 Q Did you serve a second subpoena?

1 THE WITNESS: At Park Avenue?

2 MR. WEINBERG: Yes.

3 A Really, about a month after.

4 Q You served a second subpoena?

5 A Yes.

6 Q Was that served on Park Avenue?

7 A Yes.

8 Q Did you serve a subpoena on Trinity?

9 A I had a subpoena to serve, but I couldn't  
10 locate the party.

11 Q You had a subpoena but you couldn't serve it?

12 A Yes.

13 Q You never saw William Brown on Trinity Avenue,  
14 did you?

15 A No, sir.

16 Q You don't know whether William Brown ever  
17 lived at Trinity, Park Avenue or any other place except  
18 that you served two subpoenas to 700 Park Avenue, in New  
19 York City, isn't that true?

20 A Yes.

21 Q I could have lived at Trinity Avenue and you  
22 wouldn't have known the difference--  
23

1 MR. DOOLITTLE: Objection.

2 THE COURT: Sustained.

3 Q Did you go to the police department in that  
4 area to ask someone to aid you?  
5

6 A No, sir.

7 Q Did you take a look at the mail box and ask  
8 who the owner--

9 A There was a sheet there, Department of the  
10 City of New York, who the owner is on it.

11 Q No owner listed?

12 A No, nothing.

13 Q Did you go to the Department of Buildings  
14 to find out who owned the building?  
15

16 A No.

17 Q Did you go to the post office to fill out the  
18 form to find out whether this man lived in that building?  
19

20 A No, sir.

21 Q What is your method of operation at--in the  
22 service of subpoenas in the D.A.'s office? Do they give  
23 them to you beforehand?

24 A Yes.

25 Q And you are the sole server of processes for

1 subpoenas for the D.A.'s office in New York City, is that  
2 correct?

3 A No.

4 Q In the Bronx and Manhattan?

5 A I am supposed to do them--there's other men  
6 that do my work too.

7 Q Do you have any records here today that  
8 would reflect when subpoenas were given to you to service  
9 in the Bronx? Any records at all?

10 A They're downstairs in the office, yes, sir.

11 Q Didn't you speak to Mr. Doolittle before you  
12 came up here this afternoon?

13 THE WITNESS: Regarding what?

14 MR. WEINBERG: Regarding your testimony  
15 here today.

16 A No, sir.

17 Q How did you know to come to testify here?

18 A He called me to testify.

19 Q Didn't he tell you to bring the records with  
20 you?

21 MR. DOOLITTLE: Your Honor, may I cor-  
22 rect this? I didn't call Mr. Voolens. He called in,  
23  
24  
25

Voolens-for the People-cross

1 I think.

2 THE WITNESS: That's right, sir. I  
3 called in. That's right. I haven't talked to Mr.  
4 Doolittle.  
5

6 Q What records have you got here now?

7 A That is with Mr. Fabian, I believe--

8 Q That's all the records there are?

9 A There's also a log kept of the dates the  
10 subpoenas are made and issued to the men.  
11

12 Q Do you have a copy of that log?

13 A I can get it.

14 MR. WEINBERG: I would like to see that  
15 log at this point. We have a situation, if I may  
16 say so since it's a hearing, where on five different  
17 occasions subpoenas were allegedly turned over to a  
18 process server to serve Mr. Brown.  
19

20 Now, I would like to know who received  
21 those subpoenas and what efforts were made to serve  
22 those subpoenas. It's purely--all that this gentleman  
23 has testified to is that on one particular occasion,  
24 on July 5, 1966--which is almost six months ago--he  
25 went to an apartment house in Bronx County and--

1 THE COURT: I remember what he testi-  
2 fied to, so--

3 MR. WEINBERG: I would request at this  
4 time, your Honor, that this defendant--I mean this  
5 witness, shall produce here the records of the D.A.'s  
6 office as to who received the subpoenas and what was  
7 done with the subpoenas.

8 THE COURT: Can we have that sent up,  
9 Mr. Doolittle?

10 MR. DOOLITTLE: It's last year's, your  
11 Honor. We can get it by tomorrow. I don't know  
12 where they keep it now.

13 THE WITNESS: I can go down and get it.

14 THE COURT: Without delay?

15 THE WITNESS: I think so, sir.

16 THE COURT: Suppose we excuse Mr.--

17 MR. DOOLITTLE: Your Honor, the detec-  
18 tives testified that after Mr. Voolens, they took  
19 over. That's exactly what Mr. Fabian testified to  
20 when Voolens came back with nothing--then he turned  
21 it over to the detectives.

22 MR. WEINBERG: If that be the testimony,  
23  
24  
25

1 then I shall not ask any further questions.

2 If that's the--may I understand, Mr. Doolittle  
3 this gentleman stated--and if I misunderstood, then  
4 correct me--this gentleman stated that he had a sub-  
5 poena to serve. He had served him on two different  
6 occasions at 700 Park Avenue, and on this particular  
7 occasion he received--probably from the detectives,  
8 information to serve this man on Trinity Place, which  
9 was July 5th.  
10

11 He went there, made some efforts there to  
12 find the man, couldn't find him, and from that day  
13 to this day, you haven't been back there, is that  
14 correct?  
15

16 THE WITNESS: No.

17 Q And it was all turned over to the detectives  
18 after that?  
19

20 MR. DOOLITTLE: No, your Honor. Mr.  
21 Fabian said he made several telephone calls.

22 MR. WEINBERG: I'm not going to refute--

23 THE COURT: He's only talking about  
24 these dates here. In other words, we seem to differ  
25 slightly on what the dates are. I have four dates.

1 MR. WEINBERG: The dates as I remember  
2 them. your Honor, marked down, were July 6th, Septem-  
3 ber 6th, September 20th--

4  
5 THE COURT: I have September 16th.

6 MR. DOOLITTLE: For which subpoenas were  
7 issued?

8 THE COURT: Yes, October 21st.

9 MR. WEINBERG: And December 6th.

10 THE COURT: And you want to inquire into  
11 what happened with those subpoenas?

12 MR. WEINBERG: What did they do with  
13 them.

14 THE COURT: All right. Can you get that  
15 for us?

16 THE WITNESS: Yes, sir. May I say some-  
17 thing?

18 THE COURT: I don't know. Did you want  
19 to hear what Mr. Voolens has to say?

20 THE WITNESS: I want to ask a question.  
21 What exactly do you want me to get--the subpoenas  
22 that were issued that day?

23 MR. WEINBERG: They could have been  
24  
25

1 issued and left in the desk. What happened to the  
2 subpoenas?

3 THE COURT: You said there was a log.

4 THE WITNESS: That's what I want to get

5 THE COURT: We want to see what the log  
6 shows.

7  
8 MR. DOOLITTLE: I'm running into a time  
9 problem. I have this witness from Florida. I wanted  
10 I won't have much opportunity to talk to him tomorrow  
11 if we're going on with the hearing again. Unfor-  
12 tunately, my witnesses came from a couple--from out  
13 of state.

14  
15 THE COURT: How about lunch time?

16 MR. DOOLITTLE: I've got to eat, too.

17 THE COURT: When were you going to put  
18 him on?

19  
20 MR. DOOLITTLE: I don't know. He will  
21 probably be my second witness.

22 THE COURT: If I have to, I'll give you  
23 a short recess to talk to him.

24 MR. DOOLITTLE: I don't like to do it  
25 in the middle of a trial. He's down in my office

1 now, I know that, but I know he has to get to  
2 where's he's going tonight, too, and we--

3 THE COURT: Let's see if we can get  
4 finished with Mr. Voolens. I think we're almost  
5 finished.  
6

7 (Walter Voolens, recalled to the stand, and being  
8 previously sworn, testified further as follows)

9 CROSS EXAMINATION (continued)

10 BY MR. WEINBERG:

11 Q Mr. Voolens, have you gone to your office and  
12 ascertained whether you do have such record?  
13

14 A Sir, on the date that we made is what I said  
15 before, September 6th. I didn't get any subpoenas after  
16 that.

17 Q You mean July 5th?

18 A No. July was--I have that one right here.  
19

20 THE COURT: Excuse me just a minute now.  
21 The only date that an attempt was--was that September  
22 6th of what year?

23 THE WITNESS: 1966.

24 MR. DOOLITTLE: The last date?

25 THE WITNESS: The last date, yes, sir.

1 Q Mr. Voolens, unless I misunderatand, it's my  
2 impression you said you were in the Bronx on July 5th, is  
3 that correct?

4 A If I said it, I'm sorry. I thought you were  
5 talking about this one right here, which I have.

6 Q You weren't there on July 5th?

7 A No, sir.

8 Q So then when you thought it was July 5th it  
9 was September 6th, is that correct?

10 A Yes.

11 Q You were in the Bronx on September 6th?

12 A That's right.

13 Q To serve the subpoena on that day, is that  
14 correct?

15 A On Trinity Avenue, that's right.

16 Q Do you know what day that subpoena was return-  
17 able?

18 A No, I don't know offhand. I'd have to find  
19 out. Wait a minute.

20 Q Without looking at this, is it usual to serve  
21 a subpoena beforehand or on the return date?

22 A Beforehand.

1 Q So when you say September 6th that you were  
2 in the Bronx if I were to tell you that the subpoena was  
3 returnable September 6th, would that change your recol-  
4 lection of when you were there?  
5

6 A No.

7 Q Do you want me to understand you were in the  
8 Bronx on the same day that the subpoena was returnable?  
9

10 A Sometimes it could be.

11 Q What records do you have here to show that  
12 you were in the Bronx on September 6th other than your  
13 recollection?

14 A I have no record.

15 Q You don't keep any records?  
16

17 THE WITNESS: Of where we go each day?

18 MR. WEINBERG: Yes.

19 A Because it's impossible to do all the sub-  
20 poenas in one day, we hold them over from one day to the  
21 next.

22 Q What do you do with a subpoena that's not  
23 served?

24 A Bring it back to the office with the infor-  
25 mation.

1 Q Have you got the subpoena here for September  
2 6th?

3 A No, I don't.

4 Q Do you know what happened to that subpoena?

5 A No, I don't.

6 MR. WEINBERG: No further questions.

7 REDIRECT EXAMINATION

8 BY MR. DOOLITTLE:

9 Q You said something about July 6th. Actually,  
10 you attempted to serve the defendant, William Brown at  
11 700 Park Avenue, New York City on July 6th, is that cor-  
12 rect?  
13

14 A 700 Park Avenue, July 6th, that's right.

15 Q And after that date and some time prior to  
16 September 6th you got the Bronx address, is that correct?  
17

18 A That's right.

19 Q Was it on September 6th that you went up there  
20 and attempted what you just testified?  
21

22 A I believe so.

23 MR. DOOLITTLE: No further questions.

24 MR. WEINBERG: No further questions.

25 THE COURT: Just before you leave, I

1 have one question. What about the log?

2 MR. DOOLITTLE: He has that there.

3 THE WITNESS: I have the log, sir, but  
4 it wouldn't be in this log because we didn't get  
5 any subpoenas after that date, which I told the  
6 gentleman, I didn't get any to go to the Bronx. It  
7 was turned over to the detectives.

8  
9 THE COURT: All right. You may step  
10 down.

11 (The witness was excused)

12 MR. DOOLITTLE: I can put Detective  
13 Altomare on now. He's just come back.

14  
15 THE COURT: All right.

16 MR. DOOLITTLE: I call Detective Altomare  
17 to the stand.

18 C A R M A N A L T O M A R E , recalled to  
19 the stand on behalf of the People, further testified  
20 as follows:

21 REDIRECT EXAMINATION BY MR. DOOLITTLE:

22 Q Detective Altomare, this address in the Bronx--  
23 Trinity Avenue, is it?

24  
25 A Yes, sir.

Altomare-for the People-redirect

1 Q Was that an address that William Brown had  
2 given you at the time you originally met him?

3 A The first time I met him, yes, sir.  
4

5 Q Did you give that information or that address  
6 to the D.A.'s office?

7 A Yes, sir, I did.

8 Q Was that after you learned that he couldn't  
9 be served at 700 Park Avenue?

10 A That's right, sir.

11 Q Today, under my instructions did you go up to  
12 Trinity Avenue to that address in the Bronx?  
13

14 A Yes, sir, I did.

15 Q Did you, together with Detective Koehler  
16 conduct an investigation and learned the whereabouts of  
17 William Brown?

18 A Yes.

19 Q Will you tell me when you left, where you  
20 arrived and what you did--everything you did and every-  
21 thing you ascertained today?  
22

23 A We left the early part of this afternoon. We  
24 went down to 835 Trinity Avenue in the Bronx.

25 Q That's the address given to you by William

1 Brown as being his home address?

2 A Correct.

3 Q What did you do when you got there?

4 A We got hold of the superintendent of the  
5 building, a Mrs. Black, and she informed us there was a  
6 Brown family living in the apartment on the fourth floor  
7 but she was not sure if the family was William Brown, but  
8 she knew there was a family named Brown.

9 We went to the fourth floor and knocked on  
10 Apartment 43 and we found Louise Brown, who informed us that  
11 William was her husband but he was not living with her and  
12 he had left her some time around October, 1965 and she was  
13 on welfare. We asked Mrs. Brown if anyone else had been  
14 trying to contact her husband and she said that she had  
15 been getting phone calls from the police department and  
16 also from the D.A's office trying to locate William Brown,  
17 and she told them she hadn't seen him for a long time.

18 I also left my name and phone number, that  
19 if he should come back in the future, to contact me right  
20 away. That's about it, sir.

21 Q Did you ascertain how she's living now? Is  
22 he supporting her?

1           A       She's on welfare now. That was one of the  
2 reasons--they had some kind of married trouble and took  
3 off and she's not seen him since.

4           Q       And as a result she's now being taken care  
5 of by the Welfare Department of the City of New York?

6           A       That's right.

7                   MR. DOOLITTLE: No further questions.

8                   MR. WEINBERG: I've got a lot of ques-  
9 tions.

10                   CROSS EXAMINATION

11                   BY MR. WEINBERG:

12           Q       Detective Altomare, this is the first time  
13 that you went up to the Bronx, isn't that so?

14           A       First time I went to 835 Trinity Avenue.

15           Q       Were you ever handed any subpoenas before  
16 today to go up to the Bronx to serve subpoenas?

17           A       No, sir.

18           Q       You knew nothing about subpoenas before today?

19           A       I knew that subpoenas were being served on him.

20           Q       You mean they were issued to be served, not  
21 served--they were issued. Do you know the difference be-  
22 tween the service and the issuance of a subpoena?  
23  
24  
25

1 A I believe so, sir.

2 Q All right. Now, if I gave you a subpoena and  
3 you put it in your pocket, that wouldn't be service, would  
4 it?  
5

6 MR. DOOLITTLE: Objection, your Honor.

7 THE COURT: Overruled.

8 Q That wouldn't be service, would it?

9 A If you put it that way, no, sir.

10 Q Were you given any subpoenas in September,  
11 October, November or December of 1966 to serve any William  
12 Brown?  
13

14 A To serve on William Brown, no, sir.

15 Q Were you here when Mr. Voolens just testified?  
16 Were you in this room?

17 A I just heard the last part of the conversation.  
18

19 Q If I were to tell you that Mr. Voolens tes-  
20 tified that he went up to the Bronx in September of 1966  
21 and that after that date, subpoenas and all other matters  
22 were to be taken care of by the detectives' office, would  
23 that be a fact?

24 MR. DOOLITTLE: Objection. This witness  
25 can't testify as to the veracity of another witness'

statement.

MR. WEINBERG: This is a hearing. This witness has testified he made a mistake when he said July he went up. Then he says he went up in September and after that he had nothing to do with subpoenas, that it was in the hands of detectives. Another witness in the D.A.'s office, Mr. Fabian-- three more subpoenas were issued. Those subpoenas have disappeared into mid-air. Nobody knows what happened to them. Nobody made an effort to go to the Bronx until this very day to find out whether Mr. Brown--

THE COURT: Isn't that the question we want to ask?

MR. WEINBERG: I want to find out--

THE COURT: Ask him about these subpoenas.

Q Did you get a subpoena to be served on September 20th of 1966 on William Brown?

A No, sir.

Q Did you get a subpoena to be served on William Brown on 10/21 of 1966?

1 A No, sir.

2 Q Did you get a subpoena to be served on William  
3 Brown on 12/6 of 1966?

4 A No, sir.

5 Q Did you get a subpoena to serve William Brown  
6 to Court today?

8 A If I could locate him, yes, sir.

9 Q Have you got a subpoena in your pocket?

10 A Not in my pocket.

11 Q Where is the subpoena?

12 A I would get one from the D.A's office, but I

13 Q But you didn't have a subpoena before?

14 A No, sir.

15 Q Nobody issued such a subpoena to serve Brown  
16 today, is that correct?

17 A No, sir.

18 MR. WEINBERG: No further questions.

19 MR. DOOLITTLE: No further questions.

20 THE COURT: All right. Thank you.

21 MR. WEINBERG: Your Honor, at this time--

22 THE COURT: Let's see if there are any  
23 other witnesses.

1 MR. DOOLITTLE: Detective Koehler, but  
2 it would just be cumulative testimony, your Honor.  
3 Just one second--let me recall this witness for one  
4 further question.  
5

6 THE COURT: All right.

7 BY MR. DOOLITTLE:

8 Q Did Mrs. Brown, incidentally, tell you whe-  
9 ther or not--I think you testified that she said she had  
10 gotten calls from the Police Department.  
11

12 A Well, prior to today?

13 Q Did she tell you that she would tell them,  
14 that she would notify them if he arrived?

15 A Yes, sir.

16 MR. WEINBERG: That's objected to as  
17 being hearsay.  
18

19 THE COURT: I'll take it.

20 MR. WEINBERG: May I be heard on this  
21 motion?

22 THE COURT: Yes.

23 MR. WEINBERG: There are certain alien  
24 facts that are absolutely apparent, taking the tes-  
25 timony of the police officers to be 100 percent

1 accurate, taking the testimony of the D.A's  
2 office to be 100 percent accurate, and that is  
3 the following. Not one constructive thing was  
4 done in the case since September 6, 1966 to  
5 this day by the Police Department or the D.A's  
6 office in going to the situs of where the Browns  
7 lived, if they do live there now.  
8

9 At best, we have the following testi-  
10 mony; we have the testimony of the D.A's office  
11 to the effect that on two different occasions  
12 at number 700 Park Avenue, in 1965, there was  
13 effective service of a subpoena on William  
14 Brown. We have the testimony of Mr. Voolens to  
15 the effect that although he said July, he meant  
16 September. He went up to 835 Trinity and he  
17 was unable to find the party up there and he  
18 dropped the matter because he was not going  
19 back there. It was now in the hands of the  
20 detectives.  
21

22 The detectives have stated, in glitter-  
23 ing generalities that they had called this one  
24 and that one but only on the eve of a trial in  
25

1 a matter where this is the sole eye witness I know  
2 of to date and who testified at the felony  
3 hearing, did they make a belated attempt to find  
4 the man whose very testimony in this case is  
5 the heart of the entire case.  
6

7 Now, if this be the due diligence that  
8 is required by the statute, then I state that  
9 anything is due diligence; that they have not  
10 performed the same functions that they would  
11 perform if they were out to apprehend a criminal.  
12 This man's testimony is not only the  
13 heart of the case, because he's the only one  
14 who could positively--  
15

16 I can think of many, many things that  
17 should have been done by the D.A's office, and  
18 I'm not a detective. One, they could have found  
19 out who the superintendent was before today.  
20 They could have checked who the landlord was.  
21 They could have gone to the postal authorities.  
22 They could have gone to many, many people--the  
23 Social Security would give out the information--  
24 the Board of Elections would have it. These  
25

1 are all telephone calls. I don't know if they  
2 were made or not. We may have over-zealous  
3 police officers who have testified to something  
4 that didn't occur, but I do know one thing. This  
5 is not due diligence that the Court feels neces-  
6 sary.  
7

8 During lunch hour I had occasion to step  
9 into the library and try to find some appropriate  
10 law on the subject matter and the only cases that  
11 I could find--and that was in about fifteen min-  
12 utes--were People vs. Fish and People vs. Hines  
13 cases. In the Hines case they speak of that due  
14 diligence that is required of the police to do  
15 something. I don't think the police have per-  
16 formed in this matter. I don't think the D.A's  
17 office at this time has performed sufficiently  
18 to warrant this particular type of evidence to  
19 be introduced in so serious a matter as this  
20 one, particularly in light of the fact that this  
21 is the heart of the whole case.  
22  
23

24 MR. DOOLITTLE: Your Honor, I submit  
25 that diligence, of course, is a question of fact

1 for this Court to decide and this is the sole  
2 issue in this case, but I take it that the  
3 Court isn't unmindful of the fact that the D.A's  
4 office has other cases besides the case of People  
5 against Rossilli and, unfortunately, we have  
6 only a limited staff.  
7

8 First of all, we have the testimony--  
9 and its rather implicit by the fact that this  
10 witness appeared on several occasions without any  
11 qualms at all, that he was a willing witness.  
12 Now, then, he seems to get in trouble with his  
13 wife and in October of 1965, he's gone.  
14

15 We checked his home. Mr. Voolens tes-  
16 tified he tried to find him. He couldn't find  
17 him. At that point we then assigned the matter  
18 to the Police Department. They made telephone  
19 inquiries. I don't know where else they could  
20 have checked, your Honor. Until, finally today,  
21 they went to the place and did check this place  
22 and, even if they'd gone there in the first place  
23 they'd be no better off now. If the Welfare  
24 Department of the City of New York can't find  
25

1 this man, very obviously they can't. Then cer-  
2 tainly the Police Department of Nassau County  
3 can't find him.  
4

5 I don't know what due diligence is, your  
6 Honor. The D.A.'s office nor the Police Depart-  
7 ment--they can't stop all other business to  
8 search the United States or the entire colored  
9 neighborhood of the Bronx to find one witness.  
10

11 We've done everything humanly possible to  
12 find this witness and I submit, your Honor, that  
13 there has been due diligence, and due diligence  
14 is not a matter of time. Even today, it's imma-  
15 terial whether we subpoenaed this man for this  
16 trial last Friday, Thursday or today. He  
17 wouldn't testify today. He possibly wouldn't  
18 testify tomorrow. Just on the acts of what  
19 they've done today, that complies with the  
20 statute, I think.  
21

22 THE COURT: Well, the consideration  
23 there is that if you learn something at an earlier  
24 date, then you have an opportunity possibly to  
25 explore other avenues that may open up.

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MR. DOOLITTLE: But, your Honor, if you go to his place of business and they have no idea where he is; you talk to his wife, whom he evidently has abandoned and she has no idea where he is; you talk to the Board of Elections you talk to Consolidated Edison, you talk to the school system, I frankly--and I have some experience in this business--don't know where else you can go.

THE COURT: Anything else, gentlemen?

MR. DOOLITTLE: For, I submit, your Honor, that there is due diligence.

THE COURT: I'll render my decision tomorrow.

MR. WEINBERG: If I could just add one point to that, if I may--because I didn't know until this morning, I think, that we did not have this witness--this was yesterday--this witness is as important to us--believe it or not--as it is to the prosecution, to my way of thinking. It may sound odd-ball for me to say that when this is the sole eye witness in the case that I know of.

1 MR. DOOLITTLE: Let me correct that,  
2 your Honor. I've advised Mr. Weinberg--he knows  
3 that I've maintained I have two other eye wit-  
4 nesses and I don't think that should be the  
5 crucial factor here. I don't think the statute  
6 designates whether it's the one witness or the  
7 only witness, or one of twenty witnesses. That's  
8 not the criteria.  
9

10 MR. WEINBERG: There is still a grave  
11 question as to--and although the Court has found  
12 the section to be Constitutional--I would say  
13 that there might be a grave question as to the  
14 Constitutionality of that section coupled with the  
15 cumulative factors in this case, if they be true,  
16 the two-year period subsequent to this statement  
17 made by Mr. Brown in the felony court; the fact  
18 that this defendant has not had a trial for  
19 almost two years; the fact that--  
20

21 MR. DOOLITTLE: It's not a fair state-  
22 ment--"has not had a trial". I think that the  
23 Court records will indicate that the request for  
24 adjournments were on the part of the defendant,  
25

1 not the People.

2 MR. WEINBERG: Not since 1965, and I'm  
3 not holding cumulative factors with regard to  
4 this one incident, to wit, the testimony of this  
5 one person, William Brown, as being an integral  
6 part of the trial. Now, it might behoove the  
7 Court--I'm just throwing this out from left field  
8 it might behoove us to give us some time to see  
9 if we can physically find this man.

10 I don't think--and I say that frankly--  
11 I don't think that the efforts that have been  
12 made here, although they sound wonderful, in fact  
13 you must go to the situs to find the people, and-

14 THE COURT: You're making a motion for  
15 a withdrawal of a juror at this time?

16 MR. WEINBERG: I'm making two motions.  
17 No. 1, my first, of course, is that I am moving  
18 that under Section 8 the testimony not be per-  
19 mitted. No. 2, if that not be granted, then I'm  
20 making a motion for withdrawal of a juror in  
21 order that it will give both sides, the D.A. and  
22 myself sufficient time to check into the where-  
23  
24  
25

1           abouts of this particular witness.  
2

3           MR. DOOLITTLE: I would not consent to  
4           the withdrawal of a juror. I would oppose that.  
5           I think that under Section 8 we have complied  
6           with the law, and I can't consent to the with-  
7           drawal of a juror. I think if I do, I think we  
8           have a double jeopardy.  
9

10          THE COURT: Not if the motion is made  
11          by the defendant.

12          MR. DOOLITTLE: Even if I consent--

13          THE COURT: The motion is made by the  
14          defendant. That takes care of the double jeo-  
15          pardy.

16          MR. DOOLITTLE: I --if I consent, there's  
17          a problem.

18          THE COURT: --it isn't going to be de-  
19          termined by whether you consent to it, but you're  
20          making that motion?

21          MR. WEINBERG: Yes.

22          MR. DOOLITTLE: I want to put on the  
23          record that I oppose.  
24

25          THE COURT: Well, in that case, I'll

1 reserve decision until tomorrow morning.

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3 (Whereupon, the hearing was concluded.)  
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1 COUNTY OF NASSAU: COUNTY COURT  
2 PART IV

3 - - - - -x

4 PEOPLE OF THE STATE OF NEW YORK

INDICTMENT # 20991

5 -against-

6 SEBASTIAN ROSSILLI,

7 Defendant.  
8  
9 - - - - -x

10 Mineola, New York  
11 January 17, 1967

12 B e f o r e: HON DOUGLAS F. YOUNG,  
13 County Court Judge

14 A p p e a r a n c e s:

15 WARREN DOOLITTLE, ESQ.  
16 Assistant District Attorney  
17 For the People

18 JOEL WEINBERG, ESQ.  
19 For the Defendant

20 MINUTES OF TRIAL  
21 Re: Robbery, 1st Degree  
22 Burglary, 2nd Degree  
23 Grand Larceny, 1st Degree  
24 Assault, 2nd Degree (5 Counts)  
25

Reported by: Paul J. Quinn  
District Court Reporter

1

THE COURT: Good afternoon.

2

THE CLERK: People vs. Rossilli.

3

MR. DOOLITTLE: People are ready.

4

MR. WEINBERG: Defendant is ready.

5

6

THE CLERK: Both sides are ready, your

7

Honor. Defendant is advised if he wishes to challenge a juror he may do so before they are sworn.

8

9

THE COURT: There are twenty peremptory challenges. People have the same number.

10

11

THE COURT: Gentlemen, and Madam, too--

12

I think I see only one lady in the group, we're going to proceed with the selection of a jury.

13

14

15

I'm Judge Young and Mr. Doolittle is the Assistant D.A. who will be in charge of the People's case. Mr. Weinberg is the defense counsel. There will be various questions asked of the gentlemen in the jury box. I ask you to listen to the questions carefully and if, by any chance you have any difficulty hearing, give me a signal and we'll have them repeated or have you moved to a location where you can hear better so that you will follow what's going on, the reason for that being that some of these

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1 gentlemen may be excused by either counsel and  
2 some of you may be called upon to replace them,  
3 in which case it is necessary and desirable that  
4 you should know the direction that the questioning  
5 has taken and what ground has been covered, and I  
6 let you know that the questions the attorneys ask  
7 will not be for any purpose of inquiring into your  
8 private lives but simply for the purpose of getting  
9 a background to enable you to determine whether you  
10 have any experience or anything in your background  
11 which might make it difficult for you to sit as an  
12 impartial juror in this trial. So now we will pro-  
13 ceed with our selection of a jury.  
14

15  
16 (Defense attorney, Mr. Weinberg, proceeds to  
17 examine the prospective jurors.)

18 MR. WEINBERG: I have no challenges  
19 for cause.

20 (The Assistant District Attorney resumes his  
21 examination of the prospective jurors.)  
22

23 THE COURT: Do you have any challenges  
24 for cause?

25 MR. DOOLITTLE: No challenges.

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MR. WEINBERG: The jury is satisfactory.

THE COURT: Any peremptory challenges?

MR. DOOLITTLE: No, I have no peremptory challenges. The jury is satisfactory.

MR. WEINBERG: The jury is satisfactory.

THE COURT: Swear in the jury.

THE CLERK: Jurors, please rise.

(Jury is sworn in)

THE COURT: Now we'll select one alternate juror. You'll each have two peremptory challenges per alternate.

(Defense attorney examines alternate juror.)

(The Assistant District Attorney examines alternate juror.)

MR. DOOLITTLE: Satisfactory to the People.

MR. WEINBERG: I have no challenges.

THE COURT: Mr. Clerk, swear the entire jury.

THE CLERK: Jury please rise.

(Entire jury sworn in)

1 THE COURT: I'll just give you some  
2 short preliminary instructions or information.  
3 Firstly, I'm required each time you leave a jury  
4 box, to give you a certain instruction and I'll  
5 tell you what it is now and it applies when you  
6 leave the jury box today and it will apply each  
7 time you leave during the course of the trial.  
8 Even if I should forget to give it to you--which  
9 I don't expect--but I'm required to tell you that  
10 you should not discuss the case among yourselves  
11 or with anyone else until the case is finally sub-  
12 mitted to you.  
13

14 You should not form any opinion about  
15 the case until it is finally submitted to you, and  
16 that means until the trial is actually over, you've  
17 heard the evidence presented to you and you've  
18 heard the summations of the counsel and I've given  
19 you the instructions on the law, and then you're  
20 sent to the jury room for your deliberations. Until  
21 that point, those instructions are in effect.  
22

23 There's a very good reason, which I won't  
24 dwell on at any length, but it has been found by  
25

1 long years of experience that pre-judgments or  
2 snap judgments are very apt to lead you astray,  
3 and also the discussion of the case before the  
4 case is completed can lead to some erroneous con-  
5 clusions and consequently these should be avoided.  
6 That's the reason, and that's why it is so import-  
7 ant that it's in our laws as a requirement, so  
8 p lease observe that, gentlemen.  
9

10 Then, I'll just tell you very briefly how the  
11 case proceeds. You will hear the D.A's opening, and  
12 incidentally, the delay that occurred this morning  
13 was due to some preliminary matters which had to  
14 be taken care of, as far as this trial is concerned  
15 and which do not require, however, the presence of  
16 a jury. We'll continue some of those after you  
17 leave and possibly tomorrow morning as well, but  
18 the case is being carried on even though there has  
19 been no necessity for the presence of a jury during  
20 that part of it.  
21

22 Now, after the opening by the D.A., the de-  
23 fense has a right to open or not, as it may elect,  
24 as the counsel for the defense may decide.  
25

1           Then we go into our proof and in the course  
2 of the presentation of the case it also happens  
3 there may be some questions asked or a question  
4 asked and answered, and there may be an objection  
5 to it or there may be an offer of some evidence to  
6 which there is an objection. At times these ob-  
7 jections may be made in open court before you, but  
8 if there's going to be any extended discussion of  
9 the law we'll excuse you and have you go to the  
10 jury room. There is a reason for that, too, that  
11 discussions of the law frequently involve statements  
12 which might be confused as constituting evidence,  
13 and many times there are propositions advanced which  
14 are erroneous. We find this may be confusing and  
15 it is of no help to you, so that is the reason that  
16 these are taken out of the hearing of the jury.  
17

18           Sometimes, when the question can be quickly  
19 determined, counsel will probably come up to the  
20 bench and either ask a question or it can be deter-  
21 mined out of your hearing so that at the end of the  
22 presentation of the evidence I'll stress to you  
23 that only evidence, the only evidence you consider  
24  
25

1 is the evidence which is admitted by me, acting  
2 as a Judge, as being competent evidence, admissible  
3 evidence, and if you have heard something which I  
4 have decided or ruled should be stricken out, then-  
5 in other words, I sustained an objection and I or-  
6 dered that it be stricken, you can't wipe that out  
7 of your mind, but you could exclude it from your  
8 deliberations. You do not count it or consider it  
9 in your deliberations when you're trying to find out  
10 what the facts are and what conclusion you draw  
11 from those facts, so remember, those are out of the  
12 case.  
13  
14

15 Then, at the end of the case, after all the  
16 evidence is in, the testimony has been given and  
17 any exhibits which were offered and which are received  
18 in evidence, there will be summations by counsel in  
19 which they present what they think should be a proper  
20 view of the evidence and following that will be the  
21 charge from me to you as to the law that you apply  
22 to the case, and that's the way the case will progress  
23

24 I'm sure you will find that it will be a stimu-  
25 lating experience. We're going to excuse you now.

1           The injunction I gave you now, not to dis-  
2 cuss the case until the conclusion of the case,  
3 until it is submitted to you, so I'll see you to-  
4 morrow morning at 9:30. It's possible we may go  
5 a little beyond 9:30, but we'll make every effort  
6 to get started then.  
7

8  
9           (Whereupon, the trial was adjourned  
10 to January 18th, 1967 at 9:30, A.M.)  
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1 TRIAL CONTINUED  
2 JANUARY 18, 1967

3 THE CLERK: People vs. Sebastian  
4 Rossilli.

5 THE COURT: Good morning, gentlemen.  
6 You may proceed.

7 MR. DOOLITTLE: May it please the Court,  
8 Mr. Weinberg, Mr. Foreman, gentlemen of the jury  
9 Mr. Alternate Juror, at the outset of every cri-  
10 minal case the law imposes the duty on the D.A.  
11 to make an opening address. This opening address  
12 is similar to when you open the cover of a book.  
13 You see the table of contents; you get some vague  
14 idea of what is going to follow. I call it  
15 like a blueprint.  
16

17 We're going to give you the substantial  
18 facts which we need, we intend to prove.

19 Now, I will admonish you and the Court  
20 will admonish you that the --that at this point  
21 what I say, what the lawyers say is not evi-  
22 dence, so that what I say is not evidence. It's  
23 merely what the People intend to prove.  
24

25 Now the case is here before you by reason

1 of the fact that the grand jury of Nassau  
2 County returned an indictment against this de-  
3 fendant, Sebastian Rossilli, and, so that you  
4 can fully understand the specific charges  
5 against Mr. Rossilli, I'll read the indictment  
6 to you. Remember this, that this indictment  
7 is merely an accusation, a charge. It is not  
8 evidence. The indictment reads as follows:  
9

10 " County of Nassau. The People of the  
11 State of New York against Sebastian Ros-  
12 silli, defendant.  
13

14 The grand jury of the County of Nassau  
15 by this indictment accuse the defendant  
16 of the crime of robbery in the first de-  
17 gree, committed as follows. The defendant  
18 Sebastian Rossilli, aiding and abetting  
19 and being aided and abetted by two persons  
20 to this grand jury unknown in the County  
21 of Nassau, State Of New York, on or about  
22 the 11th day of January, 1965 in the day-  
23 time of said day unlawfully and feloniously  
24 took certain property owned by Sydelle  
25

1 Marcus, having an aggregate value of abo  
2 \$40,000; to wit, miscellaneous jewelry,  
3 lawful currency of the United States of  
4 America, all of the total aggregate value  
5 of about \$40,000 from the person and in  
6 the presence of Sycelle Marcus and Mary  
7 Barsh, against their will by means of force  
8 and violence and fear of immediate injury  
9 to their person, said defendant being  
10 then and there assisted by accomplices  
11 actually present, being then and there  
12 armed with a dangerous weapon, to wit, a  
13 gun, being then and there aided by the  
14 use of an automobile."  
15

16 That's the first count, robbery in the first de-  
17 gree. The second count reads as follows:  
18

19 "The grand jury by this indictment further  
20 accuse the defendant of the crime of bur-  
21 glary in the second degree committed as  
22 follows: the defendant, Rossilli, aiding  
23 and abetting and being aided and abetted  
24 by two persons to this grand jury unknown,  
25

1 in the County of Nassau, State of New  
2 York, on or about the 11th day of Janu-  
3 ary, 1965 in the daytime of said day with  
4 intent to commit therein the crime of lar-  
5 ceny, broke and entered the dwelling house  
6 of Sydelle Marcus by artifice, by pretend-  
7 ing to deliver a package at said residence,  
8 there being therein at the time human be-  
9 ings."  
10

11 The second count is burglary in the second degree.  
12

13 And the third count:  
14

15 "...and the grand jury of the County of  
16 Nassau by this indictment further accuse  
17 the defendant of the crime of grand lar-  
18 ceny in the first degree committed as  
19 follows: The defendant, Sebastial  
20 Rossilli, aiding and abetting and being  
21 aided and abetted by two persons to  
22 this grand jury unknown, in the County  
23 of Nassau, State of New York, on or  
24 about the 11th day of January, 1965, in  
25 the daytime of said day, with the in-

1                   tention to deprive and defraud the owner  
2                   of the property of the use and benefit  
3                   thereof and to appropriate the same to  
4                   the use of the defendant and some other  
5                   person, stole, took and carried away from  
6                   the person in possession, said Sydelle  
7                   Marcus, certain property owned by her  
8                   having an aggregate value of about  
9                   \$40,000; to wit, miscellaneous jewelry  
10                  and lawful currency of the United States  
11                  of America, all of the total aggregate  
12                  value of about \$40,000."

13                So, the third count is grand larceny in the first  
14                degree. The fourth count:

15                "The grand jury of the County of Nassau  
16                by this indictment further accuse the de-  
17                fendant of the crime of assault in the  
18                second degree, committed as follows: the  
19                defendant, Sebastian Rossilli, aiding and  
20                abetting and being aided and abetted by  
21                two persons to this grand jury unknown,  
22                in the County of Nassau, State of New York,  
23  
24  
25

(a)

1 on or about the 11th day of January, 1965  
2 in the daytime of said day assaulted the  
3 said Sydelle Marcus with the intent to  
4 commit upon her the crime and felony of  
5 robbery and grand larceny."  
6

7 Now the fifth count:

8 "The grand jury of the County of Nassau  
9 by this indictment further accuse the  
10 defendant of the crime of assault in the  
11 second degree committed as followw: the  
12 defendant, Rossilli, aiding and abetting  
13 and being aided and abetted by two persons  
14 to this grand jury unknown, in the County  
15 of Nassau, State of New York, on or about  
16 the 11th day of January, 1965, in the day-  
17 time of said day, with force and arms  
18 feloniously did wilfully and wrongfully  
19 make an assault upon said Sydelle Marcus  
20 by the use of a weapon, instrument and  
21 thing likely to produce grievous bodily  
22 harm, to wit, a gun."  
23  
24  
25

Now the sixth count:

1 "...and the grand jury of the County of  
2 Nassau by this indictment further accuse  
3 the defendant of the crime of assault in  
4 the second degree, committed as follows:  
5 Defendant, Sebastian Rossilli, aiding and  
6 abetting and being aided and abetted by two  
7 persons to this grand jury unknown, in the  
8 County of Nassau, State of New York, on or  
9 about the 11th day of January, 1965 in the  
10 daytime of said day, assaulted Mary Barsh  
11 with the intent to commit upon her the  
12 crime and felony or robbery and grand lar-  
13 ceny, and the grand jury of the County of  
14 Nassau by this indictment further accuse  
15 the defendant of the crime of assault in the  
16 second degree committed as follows: Defend-  
17 ant, Sebastian Rossilli, aiding and abetting  
18 and being aided and abetted by two persons  
19 to this grand jury unknown, in the County  
20 of Nassau, State of New York, on or about  
21 the 11th day of January, 1965 in the daytime  
22 of said day, with force and arms did felo-  
23  
24  
25

1                   niously, wilfully and wrongfully make an  
2                   assault upon Mary Barsh by the use of a  
3                   weapon, instrument and thing likely to  
4                   produce grievous bodily harm, to wit; with  
5                   a gun."  
6

7                   That was the sixth and seventh count. Now the eighth  
8                   count:

9                   "The grand jury of the County of Nassau by  
10                  this indictment further accuse the defendant  
11                  of the crime of assault in the second degree  
12                  committed as follows: defendant, Sebastian  
13                  Rosilli, aiding and abetting and being aided  
14                  and abetted by two persons to this grand  
15                  jury unknown, in the County of Nassau, State  
16                  of New York, on or about the 11th day of  
17                  January, 1965 in the day time of said day,  
18                  with force and arms, feloniously did wil-  
19                  fully and wrongfully make an assault upon  
20                  William Brown by the use of a weapon, instru-  
21                  ment and thing likely to produce grievous  
22                  bodily harm, to wit, a gun."  
23  
24  
25

1 MR. DOOLITTLE: All of the acts and  
2 transactions alleged in each of the several counts  
3 of this indictment are connected together and  
4 form part of a common scheme and plan, so that in  
5 the first count we have robbery in the first de-  
6 gree; second count, burglary in the second degree;  
7 third count, grand larceny in the second degree;  
8 fourth and fifth counts are assaults in the second  
9 degree on Sydelle Marcus. The sixth and seventh  
10 counts are assaults in the second degree upon her  
11 maid, Mary Barsh, and the eighth count is an as-  
12 sault in the second degree upon a person by the  
13 name of William Brown.  
14

15  
16 Now, this is the blueprint that the  
17 People have to follow and I say to you gentlemen  
18 that we will prove to you beyond any reasonable  
19 doubt that this defendant, Sebastian Rossilli, on  
20 January 11, 1965 at approximately 11:15 in the  
21 morning, together with two other persons broke  
22 into, entered the home of Sydelle Marcus, committed  
23 a robbery, committed a larceny, committed these  
24 assaults and committed a burglary.  
25

1                   We will prove to you, not by what I  
2 say, but by the production of witnesses, by the  
3 production of depositions, that the following  
4 happened; that on the morning of January 11, 1965  
5 at about 11:15 in the morning Mrs. Marcus was in  
6 her home with her maid, Mary Barsh. We will  
7 prove to you that since that time Mary Barsh has  
8 left the employ--that after this incident she  
9 never even came back for her pay. Mrs. Marcus  
10 will testify that, as I say, the woman never even  
11 came back for her paycheck after this.  
12

13                   In any event, we will prove to you  
14 that on the morning of January 11, 1965, Mrs.  
15 Marcus was in her home with her maid and she had  
16 gotten through talking to a Mrs. Minskoff, who  
17 lived across the street. We will prove to you  
18 that at the time Mrs. Marcus lived at 239 Bay  
19 Boulevard, Atlantic Beach.  
20

21                   It seems that her neighbor, Mrs.  
22 Minskoff was about to move that day and she had  
23 a conversation with Mrs. Minskoff, and Mrs. Marcus  
24 was in her home.  
25

1 We will prove to you that about 11:15 in  
2 the morning that a gentleman, one of the un-  
3 known defendants, one of the two unknown assail-  
4 ants, along with Mr. Rossilli, approached the  
5 house in a brown uniform which, we will prove to  
6 you, Mrs. Marcus thought was the United Parcel  
7 carrying a package.  
8

9 We will prove to you that this unknown con-  
10 spirator, together with Mr. Rossilli, stated that  
11 he had a package for Mr. Marcus, and we will prove  
12 to you that at the door Mrs. Marcus wasn't too  
13 anxious to let him in, knew nothing about a package  
14 We will prove to you that this unknown person,  
15 this person who was aided and abetted by Rossilli,  
16 forced his way into the home of Mrs. Marcus and  
17 that after he forced his way into her home, hit  
18 her, knocked her to the floor and that he beat  
19 her when she was on the floor, and that while this  
20 man was attacking her, two other men entered into  
21 the home.  
22  
23

24 We will prove that one of those men was this  
25 defendant, Sebastian Rossilli. We will prove to

1           you that one of the man who came into the house  
2           after the first assailant had come in, attacked  
3           the maid, Mary Barsh. We will prove to you that  
4           the assailant who first came in held a gun at  
5           the head of Mrs. Marcus. We will prove to you  
6           the fear she went through--terrible.  
7

8           We will prove to you that the third man  
9           was Sebastian Rossilli, and that while these two  
10          men held Mrs. Barsh and Mrs. Marcus on the floor  
11          at the point of a gun, taped--we will prove to  
12          you that the man taped her wrist and ankles;  
13          that a search was made of the house.  
14

15          Mrs. Marcus was asked, "Where is your safe?"  
16          She told him she had no safe. They ransacked the  
17          house. We will show you pictures of the house,  
18          showing you how they ransacked the house, and  
19          we will prove to you during this course of con-  
20          duct within the house that they took certain  
21          valuable goods which approximated the value of  
22          \$40,000.  
23

24          We will then prove to you that a stroke of  
25          Heaven intervened in the person of William Brown,

1 a chauffeur to Mrs. Minskoff. We will prove to  
2 you that just fortunately at the right moment he  
3 rang the doorbell and the door was opened and  
4 William Brown stood outside the doorway asking  
5 for aspirin, and one of the gunmen, Mr. Rossilli,  
6 came out of the house pointing the gun at the  
7 head of Mr. William Brown.  
8

9 We will prove this to you by deposition. We  
10 will prove to you positive identification by the  
11 deposition by Mr. Brown of this defendant, Rossilli.  
12 We will then prove to you that during the course  
13 of the robbery, burglary, larceny and assault,  
14 that somehow the maid, Mary Barsh got free and  
15 that she ran out of the house and that she ran  
16 down the street and we will prove to you that  
17 these assailants followed Mary Barsh. We will  
18 produce for you two boys who were shovelling snow  
19 in the neighborhood and we will prove to you  
20 through them and through the deposition of William  
21 Brown that after Mary Barsh left the house these  
22 three men, including Rossilli, ran from the house,  
23 ran down the street around the corner to where  
24  
25

1 they had an automobile, which is an element in  
2 the crime of robbery in the first degree, and  
3 we will prove to you that the defendant, Sebastian  
4 Rossilli passed within five feet of these two  
5 boys who were shovelling snow, and we will posi-  
6 tively identify through these witnesses that this  
7 defendant, Sebastian Rossilli was in fact, one of  
8 the defendants.  
9

10 Incidentally, I might say that we'll also  
11 produce, through Mrs. Marcus, that she was so  
12 terrified that I don't think she could identify  
13 anybody. The only man that she saw was the man  
14 who was holding the gun to her head, which was  
15 not Sebastian Rossilli, but one of his associates,  
16 one of his co-conspirators.  
17

18 We will prove to you that these men then  
19 got away. We will prove to you that subsequently  
20 this defendant was apprehended and that he was  
21 identified by the persons, the two boys who were  
22 shovelling snow and by William Brown as being the  
23 person who was, in fact, one of the persons who  
24 robbed, burglarized and stole property from the  
25

1 home of Sydelle Marcus.

2 Now, gentlemen, we will prove to you that this  
3 defendant was one of the perpetrators of all of  
4 these crimes.  
5

6 I only ask you at the outset to listen to  
7 my admonition, that what I say is not evidence.  
8 Listen to the proof that will come from the mouths  
9 of the witnesses. I ask for your complete and your  
10 rapt attention during the course of this trial.  
11

12 I'll have an opportunity at the end of the  
13 entire case to address you again, to give you the  
14 People's summation or the People's statement as  
15 to what inferences they believe naturally flow  
16 from the evidence. The only thing I ask in the  
17 meantime is your complete attention to the facts  
18 and to the Judge's instructions on the law.  
19

20 Thank you very much.

21 MR. WEINBERG: May it please the Court,  
22 Mr. Foreman, gentlemen of the jury, at this time  
23 I have the right to either open or not open, as  
24 far as the defendant is concerned. I will be  
25 brief in my opening and state that the prosecution

113

1 has set forth in brilliant terms an opening of  
2 what he intends to prove, and I want you to hold  
3 him to what he stated he's going to prove. In  
4 addition to that, we had a fine impaneling of the  
5 jury yesterday wherein for almost two hours we  
6 went through an entire discourse about this en-  
7 tire matter.  
8

9 Now, rather than go into the facts in this  
10 case, I want you, gentlemen of the jury, to re-  
11 member that there is a grave question as to an  
12 identification problem.  
13

14 This defendant has set forth a defense of  
15 alibi. This defense of alibi is, in effect,  
16 that he was not present at the place where the  
17 alleged crimes were committed.  
18

19 Forget what you heard about what took place  
20 at the grand jury--the nature of the crimes. All  
21 of that is important, but that's not important in  
22 the identification of the defendant.  
23

24 In order that you may fully appreciate the  
25 gravamen of this situation with regard to identi-  
fication, I'm going to read to you--which is

1 somewhat unusual--some excerpts from leading  
2 persons as to the identification problem.

3  
4 MR. DOOLITTLE: Your Honor, I'm going  
5 to object. I don't think that is proper  
6 opening, your Honor.

7 THE COURT: Normally, I don't like to  
8 interrupt counsel during the course of his  
9 opening, but to read authorities, on how cer-  
10 tain people feel about--he's merely here to show  
11 what he intends to prove. That's the sole  
12 purpose.

13  
14 MR. WEINBERG: I don't have to prove  
15 anything in this trial. What I'm trying to  
16 do--there's no burden cast upon me to prove  
17 anything. What I would like to do now is  
18 just to reflect upon what the identification  
19 problem is so that the jury will have fully  
20 in focus what the problem is when each wit-  
21 ness takes the stand.

22  
23 THE COURT: I think there's a danger,  
24 Mr. Weinberg, if you were to read what you  
25 consider appropriate authority, that it may be

1 taken by the jury as constituting law.

2 MR. WEINBERG: I'm not reading law.  
3 I'm just reading the problems attendant to  
4 identification. That is nothing that--

5 THE COURT: I'm going to ask you not  
6 to read any quotations. If you want to give  
7 your interpretation of what you think the  
8 problem is or are, I think that is perfectly  
9 proper.

10 MR. DOOLITTLE: I would have no ob-  
11 jection to that.

12 THE COURT: You may recite what you  
13 think are the issues on the question of identi-  
14 fication. I think Mr. Doolittle and I agree  
15 with you that identification is of great im-  
16 portance if not of primary importance, and  
17 certainly you are permitted to discuss it, but  
18 not to read quotations.

19 MR. WEINBERG: All right. Then at this  
20 time I respectfully except.

21 At this time, let me state this. This  
22 defendant contends that he was not present at  
23 the situs where the alleged crimes were com-  
24  
25

1 committed. Whether this defendant has a  
2 prior record, whether this defendant is an  
3 upright citizen, no matter how serious the  
4 crimes that are alleged, whether they were  
5 committed or not, the sole issue that this  
6 defendant presents is, he was not the right  
7 party defendant in this action.  
8

9 Now, in view of what has just taken  
10 place, I would then state the following.  
11 Prosecution has set forth that it will pro-  
12 duce three people to testify to this defendant  
13 being present; two boys who allegedly saw the  
14 defendant scoot by them within five feet, and  
15 one William Brown.  
16

17 I want you to hold the prosecution to  
18 each one of these matters and make certain that  
19 the witnesses testify as to the identification,  
20 not the prosecution.  
21

22 In addition, the prosecution is very  
23 eloquent, very bright, but the only ones who  
24 judge the facts in this case are you. You are  
25 the sole arbiters of the facts. Forget the

1 heinousness of the crime as far as the defend-  
2 ant is concerned and solely concern yourselves  
3 with one thing. Is this the defendant? Thank  
4 you, gentlemen.  
5

6 THE COURT: Mr. Weinberg, I offer you  
7 full opportunity to discuss the question of  
8 identification.  
9

10 MR. WEINBERG: I'll go into it on sum-  
11 mation.  
12

13 MR. DOOLITTLE: Just one thing. I'm  
14 sure, Mr. Weinberg, I didn't say I would produce  
15 William Brown. I said I would produce his depo-  
16 sition.  
17

18 MR. DOOLITTLE: Your Honor, I think we  
19 had a short conference before trial and I thought  
20 I would have an opportunity--my witnesses came  
21 up from--  
22

23 THE COURT: You're asking for a short  
24 recess?  
25

MR. DOOLITTLE: My witnesses came up  
from Florida. I haven't had an--

THE COURT: It will be necessary for us

1 to take a recess now. Please don't discuss  
2 the case among yourselves or with anyone else.  
3 Please don't form any opinion or express any  
4 opinion about the case until it is finally  
5 given to you for deliberation.  
6

7 MR. DOOLITTLE: Before the Court ex-  
8 cuses the jury may I make an application that  
9 all witnesses, be they People's witnesses or  
10 defense witnesses, with the exception of the  
11 detective whom I need to assist me in the pre-  
12 paration of this case, be excluded from the  
13 courtroom during--  
14

15 THE COURT: I'll excuse the jury and  
16 then I'll--

17 (At this point the jury is excused.)

18 THE COURT: Do you join in that appli-  
19 cation, Mr. Weinberg?  
20

21 MR. WEINBERG: I do.

22 THE COURT: All witnesses for either the  
23 prosecution or the defense will be asked to re-  
24 main out of the courtroom until they are called  
25 to testify.

1  
2  
3  
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MR. WEINBERG: These are the two witnesses that the prosecution wanted to interrogate prior, and I should like to be present at such interrogation.

MR. DOOLITTLE: I don't know whether he's the attorney or not for them.

MR. WEINBERG: I'm not the attorney for them in this respect; one is the wife of the defendant and the other is the mother-in-law of the defendant, is that correct?

THE COURT: Well, I don't see any objection to his being present, anyway, at the interrogation.

MR. DOOLITTLE : I want to take a Q and= A from them.

MR. WEINBERG: That's all right.

MR. DOOLITTLE: And this recess may extend longer than I thought because--I have my own three witnesses.

THE COURT: Perhaps we could proceed and then take a longer lunch recess and then you could interview the witnesses.

1 MR. DOOLITTLE: Let me just talk to  
2 some of my witnesses.  
3

4 THE COURT: All right. You'll let me  
5 know then.

6 MR. DOOLITTLE: Only about fifteen,  
7 twenty minutes, that's all.

8 THE COURT: All right. Let's take a  
9 twenty-minute recess.

10 (A short recess was had, after which the  
11 jury was returned to the courtroom.)  
12

13 THE COURT: Let's proceed.

14 MR. DOOLITTLE: I'd like to make an ap-  
15 plication to reopen, to correct certain statements  
16 I made erroneously--not intentionally--in my  
17 opening before the jury. I have since that time  
18 talked to Mrs. Marcus--

19 THE COURT: Don't tell them until I pass  
20 on it. You have no objection, Mr. Weinberg?  
21

22 MR. WEINBERG: No objection.

23 MR. DOOLITTLE: Gentlemen, again, I re-  
24 peat, I'm going to prove everything I'd said, with  
25 the exception of certain things. I made certain

1 statements that were not intentionally made,  
2 they were made erroneously and my fault, be-  
3 cause in reading the file sometimes I don't  
4 read carefully enough and gloss over the wrong  
5 thing. I would like to correct this.  
6

7 I told you that I would prove that the  
8 witness, Mary Barsh, the maid, resigned as a re-  
9 sult of this, three days afterwards and did not  
10 get her pay, and I made much of that.  
11

12 I'd like to say that this is incorrect,  
13 gentlemen. I will not prove that. I will prove  
14 that Mary Barsh, in fact, stayed with Mrs. Marcus  
15 until such time as Mrs. Marcus moved to Florida.  
16 She remained in her employ until, I think, August  
17 of 1965. I will prove to you that Mrs. Marcus  
18 put her house up for sale and she moved to Florida.  
19 We will prove to you that Mrs. Marcus from that  
20 point on doesn't know the whereabouts of Mary  
21 Barsh; that Mary Barsh did not come to Florida,  
22 that she was invited to come, but did not come.  
23

24 So, with that correction, gentlemen,  
25 I say I will prove that this defendant committed

1 these crimes, but the fact that Mary Barsh left  
2 within three days is not correct, is erroneous,  
3 so please excuse me.  
4

5 THE COURT: Anything you want to say?

6 MR. WEINBERG: Nothing, your Honor.

7 MR. DOOLITTLE: People call Sydelle  
8 Marcus.

9 S Y D E L L E M A R C U S, called as  
10 a witness on behalf of the People, and having  
11 been duly sworn, testified as follows:  
12

13 DIRECT EXAMINATION

14 BY MR. DOOLITTLE:

15 Q Would you spell your name, please?

16 A S-y-d-e-l-l-e M-a-r-c-u-s.

17 Q Where do you live?

18 A Well, at the time I lived at 239 Bay  
19 Boulevard, Atlantic Beach. Now I live at 51-01 Collins  
20 Avenue, Miami Beach.

21 Q Mrs. Marcus, will you project your voice  
22 so that everyone in the courtroom can hear it?  
23

24 A I certainly will.

25 MR. WEINBERG: May I approach the bench?

1  
2 THE COURT: Yes.

3 MR. DOOLITTLE: Counsel wants the grand  
4 jury minutes. I'll expedite things and give  
5 them to him during the direct examination of  
6 Mrs. Marcus.

7 THE COURT: Mark them for identifica-  
8 tion.

9  
10 MR. DOOLITTLE: On the record, your  
11 Honor, pursuant to the request of Mr. Weinberg  
12 and pursuant to the rule of People v. Rosario  
13 I will at this time prior to the direct examina-  
14 tion of Mrs. Marcus, present to Mr. Weinberg the  
15 grand jury testimony of Mrs. Sydelle Marcus,  
16 sworn to before the grand jury of the County of  
17 Nassau on February 4, 1965, pages 7-15, inclu-  
18 sive, and I ask that they be marked People's  
19 Exhibit 1 for identification.

20  
21 (People's Exhibit 1 for identifica-  
22 tion received and marked.)

23 MR. DOOLITTLE: Your Honor, I think  
24 counsel has a copy of the felony minutes.

25 MR. WEINBERG: I do.

1 MR. DOOLITTLE: As long as you do, I  
2 don't have to present him with them.

3 MR. WEINBERG: I do, thank you.

4  
5 DIRECT EXAMINATION (continued)

6 Q Mrs. Marcus, back in 1965, specifically  
7 in January of 1965, where did you live?

8 A 239 Bay Boulevard, Atlantic Beach.

9 Q And with whom did you live at that home?

10 A My husband, my maid.

11 Q What was your maid's name?

12 A Mary Barsh.

13  
14 MR. DOOLITTLE: I ask that this picture  
15 be marked for identification as People's 2 for  
16 identification.

17 THE COURT: Mark the photograph People's  
18 Exhibit 2 for identification.

19 (People's Exhibit 2 received and  
20 marked for identification.

21 Q I show you People's Exhibit 2 for iden-  
22 tification and ask you whether or not that is a fair  
23 and accurate photograph of your house at 239 Bay Bou-  
24 levard, Atlantic Beach, as it existed and as it appeared  
25

1 on January 11, 1965?

2 A Yes.

3 MR. DOOLITTLE: I offer that in  
4 evidence.  
5

6 THE COURT: Show it to counsel.

7 MR. WEINBERG: What date?

8 MR. DOOLITTLE: January 11th.

9 MR. WEINBERG: No objection.

10 THE COURT: Mark it in evidence.

11 (People's Exhibit 2, previously marked for  
12 identification, now received in evidence.)  
13

14 Q In fact, you were present at the time this  
15 picture and other pictures were taken, am I correct?

16 A Yes.

17 Q And were they taken on January 11, 1965?

18 A I assume so, yes.

19 Q Were they taken the same day that this  
20 occurrence happened?

21 A I imagine so.

22 Q Now, I draw your attention to the fact  
23 that there's snow all over. Was it a snowy day?  
24

25 A It had snowed heavily the night before.

1 Q Let me ask you this, Mrs. Marcus, were  
2 you in your home in the early hours of the morning on  
3 January 11th, 1965?

4 A Yes.

5 Q Was your husband home?

6 A No.

7 Q Where was he?

8 A At business.

9 Q When had he left?

10 A Well, he used to leave by 8:30, 9:00.

11 Q Was there anybody else in the house with  
12 you besides yourself?

13 A Yes, my maid.

14 Q All right. Now, around 11:15 of that  
15 morning did something happen?

16 A Yes.

17 Q Prior to that, prior to something happen-  
18 ing, did you have a conversation with a Mrs. Minskoff?

19 A Yes.

20 Q Approximately what time was it that you  
21 had a conversation with Mrs. Minskoff?

22 A I'd say 10:15, 10:30--around that time.

1           Q           You can't tell us what Mrs. Minskoff  
2 said, but had you extended an invitation to Mrs.  
3 Minskoff?

4           A           Yes.

5           Q           What invitation had you extended to her?

6           A           I asked her to come in for a cup of coffee.

7           Q           Incidentally, was there any particular  
8 occasion that prompted inviting Mrs. Minskoff in for  
9 coffee?  
10

11          A           She maintained a summer home opposite me  
12 and she had sold the home and she was moving out that  
13 day. There was a moving truck there and she was sitting  
14 in her car, and it was a cold morning, so I invited her  
15 in just to be neighborly.  
16

17          Q           Now are you familiar with the fact whether  
18 Mrs. Minskoff had any servants?

19          A           Yes, she had a whole crew of people with  
20 her.

21          Q           Did she have a chauffeur?  
22

23          A           Yes.

24          Q           Do you know his name?

25          A           Well, I heard his name mentioned. I

1 think Brown was his last name.

2 Q William? Does that--

3 A I think so.

4 Q All right. Incidentally, you recall  
5 testifying at the preliminary hearing in this case,  
6 don't you?

7 A Yes.

8 Q Did the chauffeur also testify at that  
9 time?

10 A Yes.

11 Q That's Mrs. Minskoff's chauffeur?

12 A Yes, that's right.

13 Q You invited Mrs. Minskoff over at 10:15?

14 A About that time.

15 Q Did she come over?

16 A Yes.

17 Q Did there come a time that she left?

18 A Yes.

19 Q Approximately when did she leave?

20 A Around fifteen or twenty minutes later.

21 Q That would bring it to approximately what

22 time?

23

1           A           Well, it would be about twenty minutes  
2 after eleven, or so.

3           Q           What happened after twenty minutes after  
4 eleven?

5           A           I knew that she wasn't prepared in her  
6 home and that the place was cold, so I said to her, "If  
7 you want your crew to come over for anything, any coffee  
8 or sandwiches, I'll have the coffee pot going all day  
9 and anybody wants to come in should do so."

11          Q           That's what you said?

12          A           I said that to Mrs. Minskoff.

13                   MR. WEINBERG: I object to it as  
14 being hearsay.

15                   THE COURT: I don't think it's neces-  
16 sary—objection sustained.

17                   MR. DOOLITTLE: I submit, your Honor,  
18 it's not hearsay.

19                   THE COURT: I understand your posi-  
20 tion and whether it's hearsay or not, the question  
21 is whether it's relevant and material.

22                   MR. DOOLITTLE: I think--it's rele-  
23 vant in what subsequently happened.  
24  
25

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THE COURT: I'm going to rule that we won't go any further.

MR. DOOLITTLE: All right, fine.

Q In other words, you just extended an invitation to any of her servants if they needed it?

A Yes, I did.

Q Thereafter did something happen?

A Yes, I was standing, as I bid her "so long" and told her this I closed my storm door, not closing the other door, but locked my storm door and I stood there a while talking to Mary who was vacuuming the staircase at the time, my maid, and then I saw that man walk up the walk with a package.

Q How was this man dressed?

A Well, he was dressed in a brown uniform. To me it looked like a United Parcel uniform. He came to my door and through the closed storm door he told me that he had a package for Mr. Marcus. I looked at him and I said, "Are you sure you have the right Marcus?" because at that time we had two, another Marcus in town, and sometimes we would get their packages or their mail, and so he said to me, "Yes, I have the right Marcus."

1 So then I thought well, maybe my husband forgot to  
2 tell me. It happens. He could send a package home  
3 without telling me, and he looked authentic. So, I  
4 started to unlatch the door. That's all I had to do.  
5 He pushed me away with the package, hit me on the face,  
6 his hand started to choke me, put his hand up to my  
7 face, dragged me into the living room and threw me down  
8 on the floor, face downward.  
9

10 Q Now Mrs. Marcus, I show you People's  
11 Exhibit 2 in evidence and I ask you whether or not the  
12 walk is visible hereon and the storm door that you just  
13 described to this jury.  
14

15 (Handing)

16 A Yes. Let me put my glasses on. Yes,  
17 it's visible.

18 Q Would you hold it up in front of the jury  
19 and point it out?

20 A Right there. (Indicating)

21 Q There is only one walk there, am I cor-  
22 rect, other than the driveway?  
23

24 A Well, there was a walk to the service  
25 entrance, but this is the way he came up, this path here,  
and the service entrance was all snowed in.

1

2

3

4

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THE COURT: You are pointing to a walk more or less in the center of the house?

THE WITNESS: To the front of the house.

THE COURT: And the storm door in the front is the one you described to the jury?

THE WITNESS: That's correct.

Q Now, you say he dragged you into the living room, is that correct?

A Yes.

MR. DOOLITTLE: I ask that this picture be marked for identification, this photograph.

(Photograph, People's Exhibit 3 received and marked for identification.)

Q I show you People's Exhibit 3 for identification and ask you whether or not that picture is a fair and accurate photograph of your living room as it appeared on the morning of January 11, 1965?

A Yes.

Q All right. You say he dragged you into that room, is that correct?

A Yes.

1 MR. DOOLITTLE: I offer that in evi-  
2 dence.

3 THE COURT: Show it to counsel.

4 MR. WEINBERG: No objection.  
5  
6 (People's Exhibit 3 for identification  
7 now received and marked in evidence.)

8 MR. DOOLITTLE: Your Honor, do we  
9 have a crayon or one of those photographic cray-  
10 ons?

11 (A crayon is offered to Mr. Doolittle.)

12 Q When this man dragged you into the living  
13 room, can you indicate on People's Exhibit 3 where he  
14 took you and mark that with an X, please?

15  
16 THE COURT: That's People's Exhibit  
17 3 now in evidence.

18 (The witness complies.)

19 Q Now after he dragged you into the place where  
20 you've indicated with this crayon, what if anything hap -  
21 pened?

22 A Well, I was sort of groggy after he hit me, and  
23 I looked up and saw a stockinged face.

24 Q Mrs. Marcus, take a look at the defendant,  
25

Marcus-direct

1 Sebastian Rossilli. Was he the gentleman?

2 THE WITNESS: Who came to the door?

3 MR. DOOLITTLE: Yes.

4 A No.

5 Q After you looked up and saw the stockinged  
6 face, what happened then?

7 A Then this man who wore the uniform--he must  
8 have been up stairs somewhere, came down, sort of picked  
9 me up and sat me down on this chair right here, took  
10 out a knife, put it to my face and said, "You tell me  
11 where your safe is, or I'll cut you to ribbons."  
12

13 Q Was this also the man with the stockinged face  
14 or a different man?

15 A Seemed to be three men there.

16 Q At this point how many men besides the man  
17 in the uniform who forced his way through the storm door  
18 followed that man into the house?

19 A Two others, because one was in the living room  
20 with Mary and there was another one upstairs somewhere.

21 Q Did you get a good look at any of the other  
22 two faces?

23 A No.

24

25

1 Q Can you identify any of those persons?

2 A No.

3 Q Do you know of your own knowledge whether  
4 or not this defendant was one of those persons?

5 A I couldn't say.

6 Q You don't know whether I was there, am I  
7 correct?

8  
9 THE WITNESS: I beg pardon?

10 Q You don't even know whether I was there, do  
11 you?

12 A I'm sure you weren't.

13 Q All right. Now, Mrs. Marcus, what happened  
14 then? You're on the floor.

15 A No, at this time I was on the chair.

16 Q With the knife--

17 A He threatened me with a knife. Then I cried  
18 and pleaded with him to please leave us alone. "Take the  
19 whole house. I'll just sit here and I won't say a word.  
20 You can just take everything." Then he ran someplace  
21 again and then he came back and again he threatened me and  
22 I said, "Look, I'll show you where I keep my jewelry.  
23 Please leave us alone." And with that, he took out a gun,  
24  
25

Marcus-direct

1 pointed it at me, said, "Stand up ", walked behind me  
2 with a gun at my back and I was going up the staircase  
3 with the gun at my back and by the time I got to the head  
4 of the staircase I heard somebody say to him, "I've got  
5 it", and, like an apparition ran right past me down the  
6 staircase. I remember seeing a hat, a hat and a flash  
7 of shadow and after that the fellow in the uniform, the  
8 one who had the gun at my back took me up to the landing  
9 of the staircase where the two bedrooms--I have three  
10 bedrooms, but that particular area there are two--and he  
11 tied me up , he put adhesive on my mouth, my wrists and  
12 my ankles and told me to lie quiet. "Don't move," or some  
13 thing like that.  
14  
15

16 Q Now, up to this point, Mrs. Marcus, had you  
17 seen--what if anything was happening to Mary Marsh?

18 A I was tied up upstairs--

19 Q No, prior to your going upstairs, while you  
20 were down in the living room.

21 A Oh, yes. There was somebody holding a gun on  
22 her. That's about all I saw because I looked in one di-  
23 rection. I was told not to look at this.

24 Q You never owned a gun in your life, is that  
25

1 correct?

2 A Of course not.

3 Q But can you describe the type of gun it was--  
4 at least was it a shotgun, a rifle or a hand gun?  
5

6 A Well, I guess you'd call it a hand gun.

7 Q One that fits in the hand?

8 A It was dark and it had like a long, I guess  
9 a nozzle on it.

10 Q I'm not trying to be facetious, but were you  
11 frightened during this time?  
12

13 A I haven't been the same since. Very, petrified.

14 Q And you say you saw another one of these per-  
15 sons near Mary Barsh?

16 A Yes.

17 Q What was he doing? Was she lying--

18 A I couldn't see. She was sitting on the love  
19 seat. I don't know what he was doing.  
20

21 Q Was the gun pointed--

22 A I saw it pointed--I just saw a gun pointed at  
23 her.

24 Q Now when he took you upstairs prior to his  
25 binding you with the adhesive tape, did he ask you to show

1 A Well, I was--

2 THE COURT: Excuse me, Mrs. Marcus,  
3 but would you let counsel finish his question be-  
4 fore you answer it?  
5

6 THE WITNESS: I'm sorry.

7 A Well, I was getting ready to show him where  
8 my jewelry is, but this person, whoever he was, flashed  
9 by me and I heard him say, "I have it."

10 Q What did you keep your jewelry in, Ma'am?

11 A Oh, in a couple of--I usually kept my jewelry  
12 in the vault, but if I took any out I would bunk it in  
13 my closet in a couple of bags like a Pan American bag, or  
14 a couple of other bags, all together.  
15

16 Q Now, did anybody take anything off your  
17 person?

18 A I wore an 8-carat square cut diamond ring and  
19 wedding band and a pinky ring. That was taken.  
20

21 Q Can you tell me how much this diamond ring  
22 cost?

23 A Well, it was about a \$15,000 ring.

24 Q And did one of these men remove it from your  
25 finger?

1           A           Yes, they got the ring from my finger. I  
2 mean, not they, he, the fellow in the uniform.

3           Q           What else was taken from your person other  
4 than--

5           A           I had a twenty-dollar bill in my wallet,  
6 which was taken.  
7

8           Q           Any other rings or watches or jewelry?

9           A           They took my--

10          Q           I mean, from your person?

11          A           No, that's all.

12          Q           This was the man who was holding the gun at  
13 you, or the knife?  
14

15                   THE WITNESS: You mean the one who got  
16 the jewelry off my person?

17                   MR. DOOLITTLE: Yes.

18          A           Yes.

19          Q           Now after they tied you up, what happened  
20 then?  
21

22          A           Well, I was laying there and I was saying  
23 my prayers.

24          Q           How long did you lie there?

25          A           --and then I heard a commotion downstairs

1 and I heard something about aspirin, but that's all. Th  
2 rest was told to me.

3 Q Don't tell us what was told to you. Tell  
4 us what you heard.

5 A I heard a bell ring. I heard a lot of com-  
6 motion downstairs, but I don't know what happened down  
7 there. This was told to me later.

8 Q You heard a bell ring; you heard somebody  
9 mention aspirin and you heard some commotion?  
10

11 A Yes.

12 Q You couldn't see what was going on? You  
13 didn't hear what was going on in detail?  
14

15 A I just heard a lot of commotion.

16 Q What happened after this commotion, to you?

17 THE WITNESS: What happened to me  
18 after this commotion?

19 MR. DOOLITTLE: Yes.  
20

21 A I heard a lot of voices yelling outside--  
22 a lot of voices, and I thought to myself--

23 MR. WEINBERG: Objection.

24 MR. DOOLITTLE: You can't tell us  
25 what you thought.

1

THE WITNESS: I'm sorry. I'm not a

2

lawyer.

3

Q

Tell us only what you saw, heard or felt.

4

A

I was praying. That's all I can tell you.

5

Q

Now how long did you stay there in a tied

6

condition after this commotion?

7

8

A

Quite a while, until --

9

Q

Did you hear Mary?

10

A

I heard her screaming in the street. I heard

11

her screaming in the street and that's when I got the

12

thought--oh, I'm sorry.

13

14

MR. WEINBERG: Objection.

15

THE COURT: We understand, you're not

16

trained--

17

MR. DOOLITTLE: That's a very normal

18

thing to do, but try not to do it.

19

Q

Now, you're bound up in the ankles and wrists,

20

am I correct, Ma'am?

21

A

Yes.

22

Q

And the mouth?

23

A

Yes.

24

Q

With adhesive tape, correct?

25

1 A Yes.

2 Q You heard this commotion downstairs, some-  
3 thing about aspirin and then you heard Mary screaming?  
4

5 A Screaming.

6 Q What happened then?

7 A Well, then people started to flock into my  
8 house. I was untied, I think by one of the moving men of  
9 Mrs. Minskoff and then the next thing I knew the doctor  
10 came and I got a shot in my arm and I was out for a littl  
11 while.  
12

13 Q Now, incidentally, I ask you again to look  
14 at People's Exhibit 3 in evidence, the one before you.  
15 Can you put a Y where you observed Mary Barsh, your maid,  
16 sitting?  
17

18 A Well, I can do it here, I guess. She was on  
19 this couch, love seat.

20 MR. DOOLITTLE: Your Honor--at this  
21 time I'll still interrogate, but I'd like for the  
22 jury to take a look at this. I think they can look  
23 and listen at the same time.

24 THE COURT: I'll have to ask you not to  
25 put any questions while they're looking.

1 MR. DOOLITTLE: All right. Fine.

2 (Photograph handed to the members of the jury.)

3 Q Now did you have occasion after this thing  
4 was over to go up and see what, if any, jewelry was missing?  
5

6 A Of course. I looked over everything.

7 Q Will you tell us what jewelry you found miss-  
8 ing?

9 A All the jewelry I had in the bag. I had a  
10 double strand of pearls with a diamond clasp. I had a pin.  
11 I had a bracelet with a diamond clasp. I had another pinky  
12 ring, a diamond one. I had any number of things. I had  
13 a couple of gold pieces that were not insured.  
14

15 Q Do you know what the value was of the items  
16 that you found missing?

17 MR. WEINBERG: Objected to, your Honor,  
18 as this witness is not an expert as to what was the  
19 value of these items.  
20

21 MR. DOOLITTLE: I'll withdraw the question.

22 Q Did you buy those, or did your husband?

23 A My husband.

24 Q Do you know how much was paid for the jewelry  
25 that was missing?

1

A Well, my husband bought most of it.

2

3

Q Do you have any idea what was paid for it?

4

5

THE WITNESS: You want me to tell how much I got from the insurance company?

6

7

MR. WEINBERG: Objected to, your Honor.

8

Q Did you submit a claim?

9

A I certainly did submit a claim.

10

MR. DOOLITTLE: I think it's admissible your Honor.

11

12

THE COURT: I'll take it.

13

Q You submitted a claim for missing jewelry?

14

THE COURT: If the witness knows.

15

Q Do you know how much you received?

16

A Yes.

17

Q How much?

18

A Twenty-five thousand dollars.

19

Q I see. Were some of these items not insured?

20

21

A A couple of little items weren't. You know,

22

23

like a couple of gold bracelets and a couple of other little items.

24

Q What other items weren't--

25

A Gee--offhand it's difficult to remember.

1 Q How about cash, other than the twenty dollars?

2 Any other cash missing?

3 A No.

4 Q Any other articles missing, other than the  
5 jewelry?  
6

7 A No, just the jewelry.

8 Q Incidentally, at about 11:15 of that morning  
9 had the beds been made, if you can recall?

10 A Well, Mary was working upstairs. I would  
11 imagine so.  
12

13 Q Let me ask you this; I show you this picture  
14 which I--

15 MR. DOOLITTLE: Your Honor, I ask that  
16 this be marked People's Exhibit 4 for identification.

17 THE COURT: People's Exhibit/<sup>4</sup>for iden-  
18 tification.

19 (People's Exhibit 4 received and marked  
20 for identification.)  
21

22 Q I ask you to look at People's Exhibit 4 for  
23 identification. Can you tell me what that is a picture of?

24 A A ransacked closet.

25 Q Is that a closet in your house?

1 A Yes.

2 Q All right. What room is that closet in?

3 A That is in between the two bedrooms.

4 Q I see. Was there any jewelry in that area at

5 all?

6 THE WITNESS: In this closet?

7 MR. DOOLITTLE: Yes.

8 A No.

9 Q All right. Now prior to 11:15, the time that

10 this man broke into the house, was that the condition of

11 that particular closet?

12 A Certainly not.

13 Q After they had left the house, was that the

14 condition of the closet?

15 A Yes.

16 MR. DOOLITTLE: Your Honor, I offer that

17 in evidence.

18 MR. WEINBERG: Objection to that, as the

19 proper foundation has not been laid. This witness

20 has not testified that she saw the closet beforehand.

21 THE COURT: Sustained.

22 Q Did you see the closet beforehand?

23

1 A My closets were always immaculate.

2 Q Did you see it that day before it was ran-  
3 sacked?

4 A Of course. Why should it be upset like that?  
5

6 Q Was it in that condition?

7 A No, it was not ransacked. Not until they  
8 got there.

9 THE COURT: All right. Show it to  
10 counsel, please.

11 (Photograph shown to Mr. Weinberg.)  
12

13 THE COURT: We'll received it in evi-  
14 dence.

15 (People's Exhibit 4 previously marked for  
16 identification now received in evidence.)  
17

18 MR. DOOLITTLE: Now I ask that this  
19 picture be marked People's Exhibit 5 for identifi-  
20 cation.

21 (People's Exhibit 5 received and marked  
22 for identification.)

23 Q I ask you to look at People's Exhibit 5 for  
24 identification, Mrs. Marcus, and ask you if that is a fair  
25 and accurate photograph of the upstairs closet?

1 A Yes.

2 Q In which room?

3 A That was off the second bedroom.

4 Q Is that a fair and accurate condition of

5 the closet as it existed after these men had left the

6 premises?

7 A Yes.

8 Q Can you tell me, did you see that closet prior

9 to the three men entering your home on that day?

10 A I saw this closet many times.

11 Q Was it in that condition?

12 A Never.

13 Q It was ransacked?

14 A Yes.

15 Q I draw your attention to the--as you look at

16 the picture--the left-hand door. Was there a door there,

17 Ma'am?

18 A Yes.

19 Q Is there a door there now?

20 A I don't see one.

21 Q Was it broken prior to 11:15 on--

22 A No, the door was broken afterwards.

23

24

25

1 Q While these three men were in the house?

2 A Yes.

3 MR. DOOLITTLE: I offer it in evidence.

4 THE COURT: Show it to counsel.

5 MR. WEINBERG: No objection.

6 THE COURT: People's Exhibit 5 in evi-  
7 dence.

8  
9 (People's Exhibit 5, previously marked  
10 for identification, now received in evi-  
11 dence.)

12 MR. DOOLITTLE: I ask that the jury be  
13 permitted to see People's Exhibits 4 and 5 in evidence,  
14 your Honor.

15  
16 (People's Exhibits 4 and 5 exhibited to  
17 the jury.)

18 MR. DOOLITTLE: Just one or two more  
19 questions.

20 Q You subsequently moved from this home, is  
21 that correct?

22 A Yes.

23 Q As a matter of fact, you put it up for sale  
24 right after this incident, is that correct?  
25

1           A       As a matter of fact, the house was up for  
2 sale before the incident.

3           Q       I understand. When did you move from the  
4 house?  
5

6           A       Actually, in September.

7           Q       Did Mary Barsh still stay with you, continue  
8 in your employ?

9           A       Yes, throughout the entire time afterwards.

10          Q       Do you know where she went after you left?

11          A       No, I don't.

12          Q       You don't know where she is today?

13          A       No, I don't.

14  
15                   MR. DOOLITTLE: Thank you, I have no  
16 further questions.

17 CROSS EXAMINATION

18 BY MR. WEINBERG:

19          Q       Mrs. Marcus, do you remember testifying on  
20 two different occasions in connection with this matter?  
21

22          A       Yes.

23          Q       And on each of those occasions and here today  
24 you set forth that you cannot identify this gentleman here,  
25 Sebastian Rossilli as having been the man who was in your

1 home on that particular day, is that correct?

2 A Correct.

3 Q And as you sit here now you cannot identify  
4 this man as the man who was in your home, is that correct?  
5

6 A That's right, I can't.

7 Q On this particular day, January 11th in the  
8 morning some gentleman in a brown uniform came down the  
9 walk, is that correct?

10 A I wouldn't call him a gentleman any more.

11 Q Did he have a brown uniform on?

12 A Yes.

13 Q Will you describe him to me, as best you can?

14 A Well, I only have a very hazy recollection of  
15 him. I remember he was tall and dark--rather nice looking,  
16 I would say.

17 Q Did he have a hat on?

18 A I don't remember. I really don't remember that.

19 Q Now that gentleman most assuredly wasn't this  
20 defendant, is that correct?  
21

22 A No, he wasn't.

23 Q Now do you recollect that there were two other  
24 people in the house that day?  
25

1 A Yes.

2 Q Two other men, is that correct?

3 A Yes.

4 Q Now did you see either one of the other two

5 men?

6

7 A I never saw their faces, no.

8 Q You never saw their faces?

9 A No.

10 Q You stated before that you saw an apparition

11 shoot past you with a hat on, do you remember stating that?

12

13 A Yes.

14 Q Now that apparation that shot past you with

15 a hat on, was that a tall man or a small man, or what?

16 A I couldn't tell you. It was like a shadow

17 running past me swiftly.

18 Q But he had a hat?

19 A Yes, I remember the hat.

20 Q Do you remember how he was dressed?

21 A Like a shadow with a hat on. That's what I

22 remember. I don't remember how he was dressed.

23

24 Q You know where your living room is, is that

25 correct?

1 A Of course.

2 Q And there's a People's Exhibit, I believe  
3 No. 3--I'm doing this from memory--marked into evidence  
4 as People's Exhibit 3 which is a fair description of your  
5 living room, is that right?  
6

7 A Right.

8 Q Will you take a look at the picture, please?

9 A Yes.

10 Q Now, there were two marks on People's Exhibit  
11 3. One is where you were and the other one, I believe the  
12 Y is where Mary Barsh was, is that correct?  
13

14 A Yes.

15 Q And was there a man with Mary Barsh, where  
16 he was at the Y marked on the picture?

17 A Yes.

18 Q How many feet is it from where you were to  
19 where Mary Barsh is, in your living room?  
20

21 A I don't know how many feet.

22 Q Is it a matter of three or four feet?

23 A Maybe a little more.

24 Q Well, is it--

25 A --it's a very large living room.

1 Q Let's take a look at the X and the Y that's  
2 marked there, and will you tell me roughly, is it as far  
3 from where you are to where I am now?

4 A I was lying face downward. I looked up for  
5 a minute and saw a stockinged face. Then I was told,  
6 "Don't look at me." I saw a pair of dark shoes and the  
7 end of an overcoat, but I did see a gun as I stood up. I  
8 was with the gun in my back so I was hysterical, you  
9 might say and he told me not to look so I didn't look,  
10 but I did see a gun.

11 Q The man that told you that, though, was the  
12 same man that came in originally, is that correct?

13 THE WITNESS: The man that told me  
14 what?

15 Q The man that has his gun in your back, isn't  
16 that the same man that came in with the dark uniform?

17 THE WITNESS: Told me what?

18 MR. WEINBERG: Not to look.

19 A No.

20 Q That was a different man?

21 A That was the man holding the gun at Mary's  
22 back.

1 Q Did that man have on a hat?

2 A I don't know what he had on. I told you, I  
3 just saw a pair of shoes and the end of an overcoat. When  
4 I looked up I saw the stockinged face and when I was told  
5 not to look, I happened to see shoes and the bottom of an  
6 overcoat.  
7

8 Q So then, would this be a fair statement of  
9 the three descriptions that you have given with regard to  
10 the people that came into the house;

11 The first man came in, had a brown uniform on. Is  
12 that right?  
13

14 A Right.

15 Q That's all you know about him?

16 A Right.

17 Q The man that was with Mary Barsh, all you saw  
18 of his appearance was shoes, a long coat and a stocking?  
19

20 A Stockinged face.

21 MR. DOOLITTLE: She testified a gun, too.

22 MR. WEINBERG: All I'm talking about is  
23 the physical appearance.

24 THE COURT: Did you see a stocking--

25 THE WITNESS: When I looked up from my

lying position I saw a stockinged face, yes.

THE COURT: And the third gentleman was the apparition that ran out of the house?

THE WITNESS: Right.

MR. WEINBERG: I have no further questions.

MR. DOOLITTLE: I have no further questions.

THE COURT: Thank you, Mrs. Marcus. You may step down.

(The witness was excused.)

MR. DOOLITTLE: I call John Friel, District Court stenographer. May I approach the bench, your Honor.

THE COURT: Yes.

(Discussion at the bench, out of the hearing of the jury.)

THE COURT: You are now going to call another witness, not the one you originally intended?

MR. DOOLITTLE: Just for the record, Mr. Friel is a court reporter and he's taking testimony right now and I understand he'll be over possibly

1           this afternoon, so I'll have to call another  
2           witness out of turn.

3           THE COURT: All right.

4           MR. DOOLITTLE: I call Brian Barto.

5           B R I A N   B A R T O, 37-05 88th Street,  
6           Jackson Heights, Long Island, called as a witness  
7           on behalf of the People and being first duly  
8           sworn, testified as follows:

9           MR. DOOLITTLE: Your Honor, before I begin,  
10          and again to save time, I'll present to Mr.  
11          Weinberg pursuant to the rule in People v. Rosario,  
12          the grand jury testimony of Brian Barto sworn to  
13          before the grand jury on February 24, 1965, pages  
14          25 and 26 and also a statement given by Mr. Brian  
15          Barto to Detective Altomare, the gentleman assisting  
16          me at the trial on February 1, 1965, and I ask that  
17          they be marked as one exhibit.

18          THE COURT: People's Exhibit 6A for  
19          identification, grand jury minutes of this witness,  
20          pages 25 and 26 and People's Exhibit 6B for iden-  
21          tification, statement of this witness dated Feb-  
22          ruary 1, 1965.  
23  
24  
25

1 (People's Exhibits 6A and 6B , respectively ,  
2 received and marked for identification.)  
3

4 DIRECT EXAMINATION

5 BY MR. DOOLITTLE:

6 Q Brian, back in 1965, January of 1965 you  
7 lived at 27 Maryland Avenue, Long Beach, New York, is  
8 that right?

9 A Yes.

10 Q And how old are you now?

11 A Eighteen.

12 Q When was your birthday?

13 A November 2nd.

14 Q So you're just eighteen now?

15 A Yes.

16 Q And are you attending college?

17 A Yes.

18 Q Out of state?

19 A Yes.

20 Q Are you a freshman?

21 A Yes.

22 Q Do you recall January 11, 1965 approximately  
23 around 11:15 in the morning being in the vicinity of  
24  
25

1 premises 239 Bay Boulevard, at Atlantic Beach?

2 A Yes.

3 Q Were you alone on that day, or were you  
4 with somebody?

5 A I was with someone.

6 Q Who were you with?

7 A My friend, I mean, my friends.

8 Q And who were they?

9 A Billy Henderson and John Swift.

10 Q And what were you doing on that day about  
11 that time?

12 A We were walking down the block. We were  
13 shovelling s now but we were just walking down the block  
14 at that time.

15 Q You were looking for a job snow shovelling?

16 A Yes.

17 Q Did you have shovels with you?

18 A Yes.

19 Q All three of you?

20 A Yes.

21 Q You say you were just walking down the block,  
22 down where 239 Bay Boulevard is?

Barto-direct

1 A Yes.

2 Q As you walked, were you walking towards  
3 239 Bay Boulevard or away from it?  
4

5 A Toward it.

6 Q Toward it?

7 A Yes.

8 Q Now, in the direction that you were walking  
9 as you approached 239 Bay Boulevard, would it be off to  
10 your right or to your left?

11 A To the right.

12 Q Where were you walking--on the sidewalk, on  
13 the street?

14 A The middle of the street.

15 Q The three of you were walking, carrying  
16 snow shovels?  
17

18 A Yes.

19 Q Looking for jobs?

20 A Yes.

21 Q Now at 11:15 in the morning, some time  
22 around then, did something happen?  
23

24 A Yes.

25 Q Will you tell us in your own words, Brian,

1     what you saw happen?

2             A     I saw three men running towards me and then  
3     they ran by us, and then they turned the corner and  
4     someone kept on saying, "Stop them."

5             Q     You heard someone yelling, "Stop"?  
6

7             A     Yes.

8             Q     What did you do when you heard that?

9             A     They were by us by that time and we turned  
10    around and went to the corner and they got in a car and  
11    they drove off.

12            Q     The same three men that ran toward you ran  
13    past you and got into the car, were they the same men  
14    that got into the car?  
15

16            A     Yes.

17            Q     Now I ask you to look around this courtroom  
18    and ask you if you can see any of the persons in this  
19    courtroom who was there, one of these three men running  
20    towards you?

21            A     Yes.

22            Q     Can you point him out?  
23

24            A     Right there.

25                   MR. DOOLITTLE: May the record indicate

1 that the witness points to and identifies the  
2 defendant.

3 MR. WEINBERG: Objection, your Honor--

4 MR. DOOLITTLE: I'll withdraw that.

5 Q Which man do you mean?

6 A The one right there.

7 THE COURT: Which table?

8 THE WITNESS: Sitting at the second table  
9 from you.

10 THE COURT: From you?

11 THE WITNESS: Yes, the man on my left.

12 THE COURT: The man on your left?

13 THE WITNESS: Yes.

14 THE COURT: Do you concede he's identified  
15 the defendant for the record?

16 MR. DOOLITTLE: Let the record indicate that  
17 the witness identifies the defendant, Sebastian  
18 Rossilli.  
19

20 Q Is there any question in your mind that this  
21 defendant, Sebastian Rossilli was one of the three men  
22 who were running toward you?  
23

24 MR. WEINBERG: Objected to.  
25

1

THE COURT: Overruled.

2

Q What was your answer?

3

A No.

4

MR. DOOLITTLE: No further questions

CROSS EXAMINATION

6

BY MR. WEINBERG:

7

8

Q Brian, you were out with two other men on

9

the day of January 11, 1965?

10

A Yes.

11

Q On that day where had you come from?

12

A Came from my house shoveling snow.

13

Q And was there a lot of snow on the ground

14

that day?

15

A Yes.

16

Q What kind of a day was it?

17

A A sunny day.

18

Q You remember that vividly?

19

A Yes.

20

Q What school did you go to?

21

A I went to Long Beach High School.

22

Q And where do you go now?

23

A College, in Florida.

24

25

1 Q Where are you going now?  
2 A St. Leo's College.  
3 Q And was it a cold day?  
4 A Yes.  
5 Q It was cold?  
6 A Yes.  
7 Q And you were walking in this vicinity, is  
8 that correct?  
9 A Yes.  
10 Q --where this incident took place?  
11 A Yes.  
12 Q Where did this incident take place?  
13 A Well, I guess about half a block away.  
14 Q And did you see anybody in the street before  
15 you saw these three people running towards you?  
16 A I don't remember. There might have been  
17 people.  
18 Q There also might not have been people, is  
19 that correct?  
20 A Yes. There was a man there, I remember now.  
21 Q There was another man?  
22 A On the other side of the street.  
23  
24  
25

1 Q Another man?

2 A Yes.

3 Q Did you see a woman?

4 A No.

5 Q No woman?

6 A No.

7 Q Did you see any police officers there at  
8 this point?

9 A No.

10 Q Were there any cars parked along the curb as  
11 you walked along?

12 A I don't remember. I don't think so.

13 Q You don't remember?

14 A No.

15 Q Now, these three men, were they running to-  
16 wards you?

17 A Yes.

18 Q They were?

19 A That's right.

20 Q And in running towards you, how was the first  
21 man dressed?

22 MR. DOOLITTLE: I'm going to object to  
23  
24  
25

1           "...how was the first man dressed".

2           Q       How was the first man that you saw--how  
3 was he dressed?

4           A       He had a coat on.

5           Q       What kind of a coat?

6  
7           THE COURT: Let the record show that  
8 Mr. Doolittle withdrew his objection.

9           Q       What kind of a coat?

10          A       One of them had a long coat on.

11          Q       Long coat?

12          A       That's right.

13          Q       What did the first man have on?

14  
15          MR. DOOLITTLE: Objection, your Honor.  
16 He's characterizing it was the first man. First,  
17 from what point?

18          THE COURT: Yes. Will you be--we  
19 don't know whether they were running all together  
20 or separately.

21          Q       When the three men came at you, coming in  
22 your direction, were they running all together, or was one  
23 running behind the other?

24          A       They were running along together.  
25

1 Q All three were in the same--  
2 A That's right.  
3 Q And they were running on the sidewalk?  
4 A No, they were in the street.  
5 Q In the street?  
6 A That's right.  
7 Q As you looked at them you were walking in  
8 the direction I'm walking to you now?  
9 A Yes.  
10 Q And they were coming in the direction where  
11 you're seated towards me, is that correct?  
12 A Right.  
13 Q Now, you saw all three men, is that correct?  
14 A Yes.  
15 Q You did?  
16 A I saw them, yes. They were running towards  
17 me.  
18 Q Now the man that was closest to the side-  
19 walk, coming in the direction that I'm walking towards  
20 you--you were coming toward me--what was that man, how  
21 was he dressed?  
22 A I'm not sure.  
23  
24  
25

1 Q And how was the second man to his left  
2 dressed?

3 A He had a coat on.

4 Q He had a coat on?

5 A Yes. The guy in the middle had a black  
6 coat on.  
7

8 Q The guy in the middle had a black coat?

9 A Yes, that's right.

10 Q How was the man all the way over on the  
11 left dressed? Did he have a coat?

12 A Yes.

13 Q He had a coat, too?

14 A Yes.

15 Q Did any have hats?

16 A One had a hat on, the one on the extreme left.

17 Q What color was it?

18 THE COURT: Let's identify--who was  
19 left?  
20

21 MR. WEINBERG: He's going--it's to his  
22 left.  
23

24 Q Is that correct?

25 A That's right.

Q He had a hat on?

- 1 A Yes.
- 2 Q Is that correct?
- 3 A Yes.
- 4 Q What color hat was it?
- 5 A I think it was black.
- 6 Q Black hat?
- 7 A I'm not sure.
- 8 Q The man that had a black hat on, did you see
- 9 his face?
- 10 A No.
- 11 Q The man--the first man that was coming at
- 12 you, did you see his face?
- 13 THE WITNESS: You mean--what do you
- 14 mean?
- 15 Q The man--as I'm approaching you now, the first
- 16 man to your extreme right, did you see his face?
- 17 A No, I saw the one in the middle.
- 18 Q You only saw the man in the middle?
- 19 A That's right.
- 20 Q What did he have on?
- 21 A A black coat.
- 22 Q A black coat?
- 23
- 24
- 25

- 1 A Yes.
- 2 Q Did he have a scarf on?
- 3 A I don't remember.
- 4 Q You don't remember. Did you see the faces
- 5 of all three men?
- 6 A Yes.
- 7 Q You did?
- 8 A Well, I didn't say I did--
- 9 Q Did you see the face of any of the three men?
- 10 A One of them, yes.
- 11 Q You saw the face of one of the three men?
- 12 A That's right.
- 13 Q How long did it take for these three men from
- 14 where you first saw them to where they ran by you? It was
- 15 a matter of seconds, is that not true?
- 16 A That is true.
- 17 Q Did you move off to the side when they were
- 18 running--
- 19 A They ran by us. They went over on the side.
- 20 Q They ran right by you?
- 21 A Yes.
- 22 Q So, the only man whose face you saw was the
- 23
- 24
- 25

- 1 man in the middle, is that correct?
- 2 A That's right.
- 3 Q And for how long did you see his face?
- 4 A Not long.
- 5 Q Would you say a matter of a couple of seconds?
- 6 A That's right.
- 7 Q And did you notice whether the man who was
- 8 in the middle had black hair or gray hair or brown hair?
- 9 A Black hair, I'm pretty sure.
- 10 Q Pretty sure, but--
- 11 A Black hair.
- 12 Q Do you know whether he had a scar on his
- 13 face?
- 14 A No.
- 15 Q You don't know?
- 16 A No.
- 17 Q And do you know whether he had shaved--whether
- 18 he was clean-shaven or had a beard?
- 19 A I don't remember.
- 20 Q You don't know that either?
- 21 A No.
- 22 Q You didn't take a good look--you couldn't
- 23
- 24
- 25

1 see that, isn't that so?

2 A No, that isn't true.

3 Q Well, describe the man's face. Did he  
4 have a beard, or didn't he?

5 A I saw his face. He had black hair and--I  
6 just saw it. When I saw the picture, I knew it.

7  
8 THE COURT: All right. I instruct  
9 the jury to disregard that comment.

10 MR. DOOLITTLE: Your Honor--

11 THE COURT: All right. Proceed.

12 MR. DOOLITTLE: Your Honor, if you  
13 want to do it in the absence of the jury, I'd like  
14 to argue that point because I think--

15  
16 THE COURT: I don't want to hear any-  
17 thing about it. If you want to come up to the  
18 bench, you may come up to the bench.

19 Gentlemen of the jury, we'll excuse  
20 you now for lunch. Please don't discuss the case  
21 among yourselves or with anyone else. Please  
22 don't form any opinion or express any opinion  
23 about the case until it's finally submitted to  
24 you.  
25

1 (The jury was excused for luncheon.)

2 THE COURT: We'll also excuse the witness.  
3 We can release you now, unless the D.A. wants  
4 you.

5 MR. DOOLITTLE: Just one second.

6 MR. WEINBERG: I have a lot of questions  
7 of this witness.

8 THE COURT: All right. I didn't mean--I  
9 meant for lunch.

10 (The witness was excused for luncheon.)

11 MR. DOOLITTLE: Your Honor, the witness  
12 blurted out the fact that he saw a picture and I  
13 think that's not objectionable under Sec. 393-b  
14 --I guess it is--of the Code which says that where  
15 identification is in issue the prior identifica-  
16 tion by a witness is admissible. That is the one  
17 time that it is. Normally, it's objectionable  
18 because it is presumably used to bolster a wit-  
19 ness' credibility, but this specific section of  
20 the Code--

21 THE COURT: Well, I'm familiar with it. In  
22 other words, it's a question of the application  
23  
24  
25

1 of it, but the section says that a witness may  
2 testify as to his prior identification but it  
3 doesn't say that he can testify as to his having  
4 identified him by photograph, and this is the  
5 point I want to check into. I think that this  
6 may be inadmissible and I'm going to check into  
7 it.  
8

9 MR. DOOLITTLE: I think the photograph  
10 from which he identified him can also be of-  
11 fered in evidence and that point--  
12

13 MR. WEINBERG: May I just say--and this  
14 is off the top of my head--I think the case of  
15 People against Trowbridge would hold--depends  
16 on the application. In this particular case, I  
17 would say that I would be confronted--this may be  
18 substantive, the fact that he personally saw this  
19 man. If the testimony be such that he saw a  
20 picture and then picked him out of the picture,  
21 that's one thing. That hasn't been testified to  
22 here now.  
23

24 He states that he was physically pre-  
25 sent on that day and then the picture bolstered--

1 that's my interpretation--that the picture  
2 bolstered his recollection of the man. When  
3 he saw the picture he recognized the man. That  
4 is the fact after the horse.  
5

6 MR. DOOLITTLE: He identified the wit-  
7 ness here in Court.

8 MR. WEINBERG: He's identified the  
9 witness in Court. The defendant is in Court and  
10 he's also identified the defendant as a result  
11 of seeing him physically at the table today.  
12

13 THE COURT: You also get into the touchy  
14 area of whether seeing the photograph refreshed  
15 or in fact, created impressions in his mind when  
16 he saw the photograph which aided him in a sub-  
17 sequent identification. That is the danger.

18 MR. DOOLITTLE: Right, but I think it's  
19 all subject to cross examination.  
20

21 THE COURT: All right. I'll consider this.

22 MR. DOOLITTLE: As I say, the Court would  
23 be apprized of the fact that I may attempt to  
24 put the photograph into evidence under 393.  
25

THE COURT: All right. Be back at two  
o'clock, please.

AFTERNOON SESSION

THE CLERK: People v. Rossilli.

(Roll call of jurors.)

THE CLERK: The jury are all present,  
your Honor.

THE COURT: I had just ruled that the  
jury would disregard testimony which I'm not  
going to have reread of the last statement of  
the witness, and I'm reaffirming that ruling  
over your objection, Mr. Doolittle.

MR. WEINBERG: I recall Mr. Barto  
to the stand.

B R I A N B A R T O, recalled to  
the stand, resumed and testified as follows:

CROSS EXAMINATION (continued)

BY MR. WEINBERG:

Q Mr. Barto, on January 11, 1965 did you  
do any snow shovelling in the vicinity of Bay Boulevard,  
Atlantic Beach?

A Yes.

Q You did?

A Yes.

1 Q Q Where did you shovel snow?

2 A I don't know the address, but it was towards--  
3 it wasn't near the house--it was opposite, where you come  
4 down Richard Street and you made a right.  
5

6 Q Do you know where 239 Bay Boulevard is?

7 A Yes.

8 Q Had you ever been to that house?

9 A No.

10 Q When was the first time you learned where  
11 239 Bay Boulevard was?

12 A After the robbery.

13 Q Excuse me--at the robbery, is that correct?

14 A Yes.

15 Q Did you see anyone coming out of 239 Bay  
16 Boulevard?  
17

18 A No.

19 Q You did not?

20 A No.

21 Q Do you know a Detective Altomare?

22 A Yes.

23 Q And did you give Detective Altomare a state-  
24 ment with regard to this matter at any time?  
25

1 A Yes.

2 Q Did you tell him you saw someone coming  
3 out of 239 Bay Boulevard?

4 A No.

5 Q And the only thing you saw were three men  
6 running in your direction, is that correct?  
7

8 A Right.

9 Q Now when you first observed these three men  
10 you were walking with two other gentlemen, is that cor-  
11 rect?

12 A Yes.

13 Q What were their names?

14 A John Swift and William Henderson.

15 Q And all three of you had done some shovelling  
16 that day, is that correct?  
17

18 A Yes.

19 Q And you were walking on the sidewalk with  
20 the houses being on the right, is that correct?

21 A I wasn't walking on the sidewalk.

22 Q You were walking where?

23 A In the street.

24 Q In the street?

25 A That's right.

1 Q When you first observed these three men  
2 how far away were they from you?

3 A About half a block.

4 Q Half a block. And you saw the three of them  
5 running toward you, is that correct?  
6

7 A That's right.

8 Q Were they to your left or to your right?

9 A They were running right towards us.

10 Q Right towards you?

11 A Yes.

12 Q And the three men that were running toward  
13 you, did you observe anything in the hands of any of the  
14 three men?  
15

16 A Yes.

17 Q You did?

18 A Yes.

19 Q What did you observe in the hand of any--

20 A One of them had a box in his hand.

21 Q Which man had the box?

22 A The one on the end. The one on the left to  
23 me.  
24

25 THE COURT: On your left?

1 THE WITNESS: That's right. He was on  
2 the left walking towards me.

3 Q The one on the extreme left had a box?  
4

5 A Yes.

6 Q Did the one on the right have anything?

7 A No.

8 Q Did you see any guns drawn, see any knives  
9 out?

10 A No.

11 Q Did you see any hats on any of these three  
12 men?

13 A Yes.

14 Q Which men had hats on?

15 A The one on the left.

16 Q The one on the extreme left had a hat on?

17 A That's right.

18 Q Did the one in the center have a hat?

19 A No.

20 Q Did the one on the right have a hat on?

21 A No.

22 Q Now, did you observe what kind of coats these  
23 three men had?  
24  
25

- 1 A Yes.
- 2 Q What kind of coats did the three men have?
- 3 A They were long coats.
- 4 Q Long coats?
- 5 A That's right.
- 6 Q What did the man on the left have?
- 7 A He had a long coat.
- 8 Q He had a long coat?
- 9 A That's right.
- 10 Q What did the man in the center have?
- 11 A A long coat.
- 12 Q And the man on the right?
- 13 A Long coat.
- 14 Q What color was the coat?
- 15 A The man in the center was black.
- 16 Q And the other two coats were?
- 17 A Grayish, like a tweed.
- 18 Q They weren't brown, were they?
- 19 A No.
- 20 Q None of them were brown?
- 21 A That's right.
- 22 Q Do you know what a Parcel Post man looks like?
- 23
- 24
- 25

1           E       No.

2           Q       You never saw a Parcel Post man?

3           A       Well, yes.

4           Q       Do you know what color uniforms they wear?

5  
6                   MR. DOOLITTLE: Your Honor, there's  
7       been no testimony about a Parcel Post man. I think  
8       she said United Parcel.

9                   MR. WEINBERG: United Parcel.

10          Q       Do you know what they wear?

11          A       Brown uniform. I'm not sure.

12          Q       If I were to tell you that they wear brown  
13       uniforms would you say any of these three men wore a  
14       brown uniform?

15  
16          A       I couldn't be sure. I wouldn't say about  
17       that.

18          Q       You wouldn't say about that?

19          A       No.

20          Q       By the way, you saw me here this morning. Am  
21       I wearing anything different than I wore here this morning?

22          A       You have your glasses off.

23          Q       That's what you observe--that I don't have  
24       my glasses on, correct?  
25

- 1           A           That's right.
- 2           Q           Now these three men that were coming at  
3 you, did they run to your left or to your right?  
4
- 5           A           To my left.
- 6           Q           They went to your left?
- 7           A           Correct.
- 8           Q           As these three men came towards you how  
9 long did it take them to get from where you first saw  
10 them to where they passed you by?
- 11          A           Not long.
- 12          Q           Very short, correct?
- 13          A           Right.
- 14          Q           Matter of seconds, is that correct?
- 15          A           Yes.
- 16          Q           And during this period of time what did you  
17 look at while they were coming--just one man, or all three?  
18
- 19          A           I looked at the one man.
- 20          Q           Just the one man?
- 21          A           That's right.
- 22          Q           You didn't look at the other two men?
- 23          A           I looked at them. He was the shortest one.
- 24          Q           He was the shortest one, but there were  
25

1 two other men, correct?

2 A Right.

3 Q Tell me what the man on the right looked  
4 like.

5 A I couldn't tell you.

6 Q Can you tell me what the man on the left  
7 looked like?

8 A He was tall.

9 Q He was tall but he had a hat on, right?

10 A Right.

11 Q You can't describe the man on the right,  
12 and he didn't have a hat on, is that true?

13 A I don't know if he had a hat on. I  
14 don't remember that.

15 Q You just testified that the only man  
16 with a hat on was the man on the left, is that correct?

17 A Right.

18 Q What did the man on the right look like?

19 What was the color of his hair?

20 A I don't know.

21 Q You don't know?

22 A No, I don't.

23

1 Q Did you ever have occasion to discuss  
2 this matter with the D.A.'s office?  
3

4 A Yes.

5 Q And with the detectives?

6 A Yes.

7 Q And did you give them a description of  
8 all three men?

9 A Well, the one man I gave a good descrip-  
10 tion of. The other two, fairly.

11 Q What was your description of the man on  
12 the right?

13 A He had a gray coat on. That's all, and  
14 he was tall.  
15

16 Q You didn't describe his hair at all?

17 A No.

18 Q You didn't describe his face at all?

19 A Not that I remember.

20 Q And how about the man on the left who  
21 had a hat on? What was your description of him?  
22

23 A He had a hat on.

24 Q That's all you said?

25 A --and a gray coat.

Barto-cross

1 Q And a gray coat?  
2 A Yes.  
3 Q And the man in the center--what was your  
4 description of him?  
5 A He was short, black hair.  
6 Q That's all, correct?  
7 A Yes. I saw his face.  
8 Q You saw his face. You saw the face of  
9 the man at the right also, is that correct?  
10 A Yes.  
11 Q Now, when you saw these three men coming  
12 at you were they all running at the same rate of speed?  
13 A At the same rate of speed. Just about.  
14 Q Who was running fastest, do you recol-  
15 lect that?  
16 A No.  
17 Q Do you know who was the first man past  
18 you?  
19 A No.  
20 Q Did you see a woman in the street at  
21 that point, a maid?  
22 A No.  
23  
24  
25

Barto-cross

188

1 Q Did you see a gentleman who was colored  
2 in the street at this point?

3 A No.

4 Q Did you see any detectives in the street  
5 at that point?

6 A No.

7 MR. WEINBERG: I have no further ques-  
8 tions, your Honor.

9 MR. DOOLITTLE: I just have one, your  
10 Honor.

11 REDIRECT EXAMINATION

12 BY MR. DOOLITTLE:

13 Q Now you say you didn't see any brown  
14 uniform, anything like that?

15 A No.

16 Q These men were all wearing coats?

17 A Yes.

18 Q You don't know what they were wearing, if  
19 anything, underneath the coats, correct?

20 A Right.

21 Q You saw these man on January 11, 1965 on  
22 Bay Boulevard, running toward you, is that correct?  
23  
24  
25

1 A Yes.

2 Q And you identified this defendant in  
3 Court here as being one of the persons whom you saw  
4 running towards you, is that correct?  
5

6 A Yes.

7 Q From the time that you saw him on Janu-  
8 ary 11, 1965 up until today did you ever see this man in  
9 person again?

10 A Yes.

11 Q When did you see him in person again  
12 after you saw him at Bay Boulevard on January 11th?  
13

14 A At the police station.

15 Q Would you describe the circumstances in  
16 which you saw him?

17 A He was in a line up .

18 Q Was this in a room?

19 A Yes.

20 Q Who was in that room besides the defend-  
21 ant, the line up and yourself?

22 A Detective Altomare.

23 Q Now, how many persons were in this line up,  
24 including this defendant?  
25

1 A Oh, four others.  
2 Q Did you know any of those people before?  
3 A No.  
4 Q Had you ever seen any of those people be-  
5 fore?  
6 A No.  
7 Q You had, I believe, testified that you saw  
8 the defendant before?  
9 A Yes.  
10 Q Other than the defendant had you ever  
11 seen any of these other persons before?  
12 A No.  
13 Q Now at that time--when was this--February  
14 1st, I think--  
15 A Right.  
16 Q --did you identify this defendant as  
17 being the person who was on Bay Boulevard on January 11th?  
18 THE COURT: Don't answer the question.  
19 MR. WEINBERG: Objection.  
20 THE COURT: Gentlemen, come up to the  
21 bench. Will you step down, please, Mr. Barto?  
22  
23 (Discussion at the bench, out of the hearing  
24  
25

1 of the witness, who was temporarily excused.)

2 THE COURT: Do you want to state  
3 anything further on the objection?  
4

5 MR. WEINBERG: At this time, I be-  
6 lieve it's improper on the grounds that on re-  
7 direct examination of this witness it would be  
8 improper to be brought out at this point.

9 MR. DOOLITTLE: I submit that counsel  
10 did go into the question of identification on  
11 cross examination, and I'm just asking the Court  
12 for permission to reopen my direct examination  
13 rather than take him off the stand and bring  
14 him back.  
15

16 THE COURT: You mean for this purpose?

17 MR. DOOLITTLE: For this purpose.

18 THE COURT: Well, I will rule thusly;  
19 I think the question started, the question of  
20 being proper redirect--the objection should have  
21 been made at that time, and inasmuch as we've gone  
22 through several questions, I'm going to permit  
23 the final one and, to the extent that it reinforces  
24 the ruling, I will also permit you--if you want to  
25

1           consider this as part of your direct case--  
2           make this part of your direct case.

3           MR. DOOLITTLE: Thank you.

4           THE COURT: The objection is overruled.  
5           Now that we're on redirect, I'm going to inter-  
6           pose my own objection on the ground it is lead-  
7           ing and suggestive.  
8           (The witness is recalled to the stand)

9           REDIRECT EXAMINATION (continued)

10          BY MR. DOOLITTLE:

11           Q           May I ask you this: you saw a line up  
12           with how many people?

13           A           Four.

14           Q           Incidentally, you said you were in the  
15           room. As a matter of fact, you were outside the room  
16           looking through a window, is that correct?

17           A           Yes.

18           Q           There's a two-way mirror, is that cor-  
19           rect?

20           A           Yes.

21           Q           You could see who was in there and they  
22           couldn't see you, is that correct?  
23  
24  
25

1 A Yes.

2 Q Did you identify--

3 THE COURT: Mr. Doolittle, will you  
4 please ask questions as to what happened?

5 MR. DOOLITTLE: I'm trying to give  
6 the circumstances, your Honor.

7 THE COURT: I don't want you indicating  
8 the possible answers within the question.

9 MR. DOOLITTLE: I'm going to ask him  
10 outright.

11 REDIRECT EXAMINATION (continued)

12 BY MR. DOOLITTLE:

13 Q Did you identify this defendant?

14 A Yes.

15 Q --at that time?

16 A Yes.

17 MR. WEINBERG: That is objected to.  
18 I'd like him to state what transpired.

19 THE COURT: I'll sustain the objection  
20 and instruct the jury to disregard that question  
21 and answer. Mr. Doolittle, don't put questions  
22 like that, please. Those are leading. That's  
23  
24  
25

1 the ruling.

2 MR. DOOLITTLE: I'm aware that's the  
3 Court's ruling, but I'd like to argue the point.  
4

5 THE COURT: I know of no other way to  
6 ask the question. You and I have had this situa-  
7 tion previously and I think you know my attitude  
8 on it and I'll have to insist that you follow it.

9 Q Let me ask you this; did you or did you  
10 not identify the defendant at that time?

11 A I did.

12 Q All right. Will you tell us how you  
13 identified the defendant at that time ?  
14

15 MR. WEINBERG: Objection. Objected to,  
16 your Honor--again, same ground.

17 THE COURT: I'll sustain the objection.

18 Q Tell us everything that transpired when  
19 you identified the defendant on February 1st at the 4th  
20 precinct station house.

21 A Well, we went into the room and I looked  
22 through this mirror, this glass, and the detective asked  
23 me did I recognize any of these people and I said, "yes",  
24 and I identified him.  
25

1 Q Did anybody suggest to you that Rossilli  
2 was one of the men involved in this thing?

3 A No.

4 Q Did anybody suggest to you that you should  
5 identify Rossilli?  
6

7 A No.

8 Q Did you do it on your own, sir?

9 A Yes.

10 Q Is there any question that the man that  
11 you identified is this defendant, Sebastian Rossilli?

12 A No, sir.

13 Q I believe you testified that the other  
14 persons in this line up you had never seen before in your  
15 life, is that correct?  
16

17 A No.

18 MR. DOOLITTLE: No further questions.

19 RECROSS EXAMINATION

20 BY MR. WEINBERG:

21 Q You were in the presence of a detective  
22 at this point, is that correct?

23 A Yes.

24 Q How old were you then?  
25

1 A Sixteen.

2 Q And when you were in the presence of  
3 the detective do you remember the shapes and sizes of  
4 the other four men that were in this particular room?  
5

6 A No--they were kind of--they were thin.

7 Q They were thin?

8 A Yes.

9 Q Is this defendant heavy?

10 A No, he's not.

11 Q What was the difference between them  
12 that made you identify this defendant?

13 A I had seen him before.

14 Q You had seen him before?

15 A Yes.

16 Q Let me ask you another question. Do  
17 you remember these three men running at you?  
18

19 A Yes.

20 Q Did one of them have an orange overcoat  
21 on?

22 A No.

23 Q Didn't have an orange coat on?

24 A No.  
25

1 Q Do you know what a trench coat looks like?

2 A Yes.

3 Q Did any of them have a trench coat on?

4 A No.

5 Q None of them had a trench coat on?

6 A No.

7 Q Were they carrying big bundles with them?

8 A No.

9 Q Just a little box, correct?

10 A That's right.

11 Q You had been with Detective Altomare on

12 a number of occasions prior to this February 1st, is that

13 correct?

14 A No.

15 Q That was the first time you met Detective

16 Altomare?

17 A No, I had met him several times.

18 Q You met him before that?

19 A Yes.

20 Q And at that time you gave him a description

21 of all the people, or just this defendant?

22 A I gave him a description of all of them.

23

24

25

1

Q Slight--

2

A The other two I couldn't describe fully.

3

4

Q You couldn't remember the hair of the

5

other man, the man on the right coming at you, correct?

6

A No.

7

MR. WEINBERG: No further questions.

8

MR. DOOLITTLE: I have no further

9

questions.

10

THE COURT: You may step down.

11

(The witness is excused.)

12

13

MR. DOOLITTLE: People call John J.

14

Friel.

15

J O H N F R I E L, 54 McKinley Place,

16

Massapequa, called as a witness on behalf of

17

the People, having been first duly sworn, tes-

18

tified as follows:

19

DIRECT EXAMINATION

20

BY MR. DOOLITTLE:

21

Q Mr. Friel, what's your occupation?

22

A Court reporter for the District Court of

23

Nassau County.

24

25

Q And what type of reporting do you do,

1 Mr. Friel?

2 A It's all the stenotype system.

3 MR. DOOLITTLE: Your Honor, at this  
4 time I'd like to have this document, pages 19  
5 through 33 marked People's Exhibit No. 7 for  
6 identification.  
7

8 (People's Exhibit 7 received and marked for  
9 identification.)

10 Q Now, that's the little machine that we  
11 have right here that the court reporter is using now?

12 A Yes.

13 Q Will you tell us something of your edu-  
14 cational background and practical experience as a court  
15 reporter?  
16

17 A In 1959 I started school at Merchants and  
18 Bankers School in New York City for stenotypy.

19 MR. WEINBERG: Your Honor, I'll sti-  
20 pulate to his qualifications, your Honor--

21 MR. DOOLITTLE: And as to his compe-  
22 tency--  
23

24 MR. WEINBERG: No doubt about that.

25 Q Right now you're employed as a reporter

1 in the District Court, is that correct?

2 A Yes.

3 Q Did you have occasion on February 5,  
4 1965 to be present in the District Court when a felony  
5 examination was conducted in regard to the case of  
6 People against Sebastian Rossilli?  
7

8 A Yes.

9 Q And was the defendant, Sebastian Rossilli  
10 in the courtroom at the time that this thing was con-  
11 ducted?  
12

13 A Yes, sir.

14 Q Is he in this courtroom now?

15 A Yes.

16 Q Would you point him out, please?

17 A Yes, the gentleman sitting next to the  
18 counsel who just rose.  
19

20 MR. DOOLITTLE: Indicating the de-  
21 fendant, Sebastian Rossilli.

22 Q Was that felony examination conducted in  
23 the presence of the Honorable John S. Lockman, District  
24 Court Judge?  
25

A Yes, sir.

1 Q Now as the felony examination progressed  
2 and up to the point of its conclusion did you take down  
3 everything that was said on your stenotype machine?

4 A Yes.

5 Q All comments of counsel, is that correct?

6 A Yes.

7 Q All comments of the witnesses?

8 A Yes.

9 Q All the comments of the Judge?

10 A Yes.

11 Q And did a colored gentleman by the name  
12 of William Brown testify in that case?

13 A Yes, he did.

14 Q And did you take down his testimony?

15 A Yes.

16 Q Incidentally, can you recall who was  
17 present at this examination?

18 THE WITNESS: In what way?

19 Q Who was the D.A? Who was the defense  
20 attorney, or would you have to look at the transcript to  
21 refresh your recollection?

22 A I don't know. There's been a number of  
23  
24  
25

1 --both the D.A. and the defendant--

2 Q I show you that document and ask you to  
3 look at that and see if that refreshes your recollection  
4 as to who was present at the time?  
5

6 A I remember Joseph Laurie being the Assist-  
7 ant D.A. and the name Irwin L. Germaise--I don't know  
8 the person. I just know the name. I know he was there,  
9 though.

10 Q He was there as an attorney for this  
11 defendant, Sebastian Rossilli?  
12

13 A That's how I got the name.

14 Q All right. Fine. You say when William  
15 Brown took the stand, as any other witness, you took all  
16 the questions and all the answers, is that correct?

17 A Yes.

18 Q And after you took these down did you  
19 get a little slip or strip of paper similar to the type  
20 that is coming out of this machine of the reporter here?  
21

22 A Yes, the pack of notes.

23 Q And did you thereafter transcribe that  
24 strip of paper, the notes, into a typewritten transcript  
25 of the hearing?

1 A Yes.

2 Q I show you pages 19 through 33 and I  
3 ask you, sir, whether or not that is a fair and accurate  
4 transcription of every question that was asked of William  
5 Brown during the felony examination of Sebastian Rossilli,  
6 and whether or not that is every answer that was given  
7 by Mr. Brown?  
8

9 (Handing to the witness)

10 A Yes.

11 Q Now, you have compared that with your  
12 notes, is that correct?

13 A Oh, yes.

14 Q And that is accurate?

15 A Yes.

16 Q Let me ask you this, sir. When you take  
17 down words on that stenotype machine you take them down  
18 phonetically?  
19

20 A Yes, by sound.

21 Q This gentleman, Brown, did he have an  
22 accent?  
23

24 A Yes, he was a Negro and he had a southern  
25 accent.

1 MR. DOOLITTLE: Your Honor, at this  
2 time I'll offer People's Exhibit 7 for identi-  
3 fication into evidence.  
4

5 MR. WEINBERG: I vigorously oppose,  
6 your Honor, on the following grounds. One, that  
7 a reading of this into evidence is violative of  
8 Section 8 of the Code of Criminal Procedure in  
9 that no due diligence has been established as  
10 the predicate for the reading of this into evi-  
11 dence. Secondly, that this witness is entitled  
12 to the right of confrontation of an adverse  
13 witness, particularly Mr. Brown in this case,  
14 and that under the circumstances he's denied  
15 due process of law, and thirdly, that the read-  
16 ing of this type of document is violative of  
17 the constitutional rights of this defendant.  
18

19 THE COURT: I take it you have no  
20 objection as to the foundation for the admis-  
21 sion of this, is that correct?  
22

23 MR. WEINBERG: The foundation, as set  
24 forth by this witness, no, I have no objection.  
25

THE COURT: No objection as to its

Friel-direct

1 possible inaccuracy, or anything else?

2 MR. WEINBERG: No, none at all.

3 THE COURT: It's substantive--

4  
5 MR. WEINBERG: Whatever this gentleman  
6 sets forth I deem accurate, but I say that the  
7 introduction is clearly violative of the law.

8 MR. DOOLITTLE: Your Honor, in view of  
9 the fact that defense counsel has made these  
10 statements in front of the Court, I am offer-  
11 ing this in evidence, a foundation now having  
12 been laid pursuant to the Court's ruling that  
13 with a proper foundation, the witness Brown  
14 unable to be subpoenaed, that this would be ad-  
15 missible under Section 8 of the Code of Criminal  
16 Procedure and accordingly would be binding evi-  
17 dence, substantive evidence. I wish the Court  
18 would so instruct the jury, in possibly much  
19 more intelligible terms.  
20

21 THE COURT: The Court rules that pur-  
22 suant to a hearing had before me, due diligence  
23 and efforts to locate the witness having been  
24 shown, that pursuant to the provisions of Section  
25

1 8 of the Code of Criminal Procedure the testi-  
2 mony taken at a prior hearing by the witness  
3 Brown is admissible in evidence in this trial  
4 as offered by the D.A. as substantive evidence  
5 of the testimony of William Brown, and his  
6 cross examination at the hearing.  
7

8 MR. DOOLITTLE: May it be marked?

9 MR. WEINBERG: I respectfully except.

10 THE COURT: People's 7 in evidence.

11 (People's Exhibit 7 for identification, now  
12 received as People's Exhibit 7 in evidence.)

13 MR. DOOLITTLE: Incidentally, your Honor,  
14 there are certain things on here which have not  
15 to do with William Brown--half a page--and I as-  
16 sume that counsel will concede that is no part  
17 of the exhibit. Just have two more questions.  
18

19 DIRECT EXAMINATION (continued)

20 BY MR. DOOLITTLE:

21 Q You say Mr. Brown was a southern Negro  
22 and spoke with rather a southern accent, is that correct?

23 A Yes.

24 Q Now you have gone over that, correct?  
25

1           A       Yes.

2           Q       And somewhere along the line here you  
3 refer to something that he says as "coat house". You  
4 took that phonetically?  
5

6           A       Yes.

7           Q       So that it came out "coat house"?

8           A       That's what I read in my notes, that's  
9 what I transcribed.

10          Q       You don't know whether he meant "court  
11 house" or "coat house"--you just took it phonetically?  
12

13          A       That's right.

14               MR. DOOLITTLE: I'd like to read this  
15 to the jury, if I may.

16               THE COURT: Read it in its entirety.  
17 (Whereupon, Mr. Doolittle read the contents  
18 of People's Exhibit 7 in evidence to the jury.)  
19

20               MR. DOOLITTLE: I have no questions of  
21 Mr. Friel.

22               MR. WEINBERG: Just one thing, your  
23 Honor, to the effect that I, Joel H. Weinberg, did  
24 not represent this defendant at that hearing.

25               THE COURT: The Court will take a

1 recess now.

2           Gentlemen of the jury, please do not  
3 discuss the case among yourselves or anyone  
4 else. Please don't express any opinion about  
5 the case until it is finally submitted to you.  
6 Now, if you will follow the attendant, please.  
7

8           (Jury excused for a recess.)

9           THE COURT: You are finished with Mr.  
10 Friel, aren't you?

11           MR. DOOLITTLE: Yes.

12           THE COURT: Thank you, Mr. Friel.  
13 You may step down.  
14

15           (The witness was excused.)

16           (A short recess was had, after which  
17 the trial was resumed.)

18           MR. DOOLITTLE: People call John  
19 Swift.

20           THE COURT: Step up here, please, Mr.  
21 Swift.

22           J O H N   P A T R I C K   S W I F T ,  
23 18 Pennsylvania Avenue, Long Beach, having been  
24 first duly sworn, testified as follows:  
25

1 DIRECT EXAMINATION

2 BY MR. DOOLITTLE:

3 Q Mr. Swift--wait just a second.

4  
5 MR. DOOLITTLE: If your Honor please, at  
6 this time I'd like to mark for identification as  
7 People's Exhibit 8A and 8B, respectively, the  
8 grand jury testimony of John Swift, specifically  
9 page 27, sworn to before the grand jury on Feb-  
10 ruary 24, 1965 and also the statement of John  
11 P. Swift, taken February 1st, 1965 and witnessed  
12 by Detective Altomare and Joseph Kaplan, and,  
13 your Honor, pursuant to Rosario, I'll present  
14 People's Exhibits 8A and 8B to Mr. Weinberg.  
15 (People's Exhibits 8A and 8B, respectively,  
16 received and marked for identification.)  
17

18 BY MR. DOOLITTLE:

19 Q Now, John, you're a student at Long  
20 Beach High School, is that correct?

21 A Yes.

22 Q What grade?

23 A Senior, 12th grade.

24 Q In fact, you're attired without a tie  
25

1 and sweater. Were you subpoenaed right in school today?

2 You went to school?

3 A Yes, sir.

4 Q And you were taken out of school and  
5 brought over to the court house, is that correct?  
6

7 A Yes.

8 Q How old are you, John?

9 A Seventeen.

10 Q Can you recall January 11th, 1965?

11 A Yes, sir.

12 Q On that particular day were you, along  
13 with Billy Henderson and Brian Barto shovelling snow at  
14 houses--  
15

16 A Yes.

17 Q Did you have occasion to be in the vicinity  
18 of 239 Bay Boulevard, at Atlantic Beach at about 11:15 in  
19 the morning?

20 A Yes, sir.

21 Q And were those other two boys with you  
22 Billy Henderson and Brian Barto?  
23

24 A Yes, sir.

25 Q Did something happen on that occasion?

1 A Yes, sir.

2 Q Tell me where you were when something  
3 happened.

4 A I was about--well, from 239 it was about,  
5 I'd say half a block to the corner where we were standing.  
6 We were standing about two houses in from the corner  
7 itself and at that time, you know, we were just walking  
8 up the street, just finished the job of shovelling, you  
9 know, shovelling snow and we were just walking down the  
10 street, just looking for another job, actually, and that's  
11 when we noticed some people running.  
12

13 Q Now, how many persons did you see running?  
14

15 A There were three men.

16 Q Were they in a group, single file, or  
17 what?

18 A They were in single file.

19 Q Now will you tell me what you observed  
20 these persons doing? Were they coming towards you or  
21 going away from you?

22 A They were running towards us.

23 Q Tell me what you observed them do.  
24

25 A They ran towards us and when they got to

1 the corner they made the turn around the corner, that we  
2 were just on opposite corners at that time. They ran to  
3 their car and at that time they got into the car and drove  
4 off and that was the last we saw of them.

5 Q Did you actually see the three men get  
6 into the car?  
7

8 A Yes.

9 Q I ask you to look around the court room  
10 and I ask you whether or not any of the men who you saw  
11 running towards you on January 11th, 1965 at about 11:15  
12 in the morning that you just described to us, are in this  
13 room?  
14

15 A Yes, sir.

16 Q Will you point out who you see that was  
17 there on that day?

18 A The first man at that table.

19 Q Which man? Is that the man to your left?

20 A The man with the gold tie.

21 MR. DOOLITTLE: May we indicate for the  
22 record, your Honor, that the witness points to and  
23 identifies the witness, Sebastian Rossilli?  
24

25 THE COURT: That's the man without  
glasses at the second table from you?

1 THE WITNESS: Yes.

2 THE COURT: All right. Identifying  
3 the defendant.

4 Q Any question in your mind that this is  
5 one of the men?

6 A No, sir.

7 Q Now, which man was he? I mean, was he  
8 the first man, the second man or the third man?

9 A He was the middle man.

10 Q I see. And, physically, how did he com-  
11 pare with the other two men?

12 A He was much smaller than--well, not much  
13 smaller, but a good bit. He was not as heavy as the  
14 other two men, either. The other men were quite heavy.

15 Q How close did you come to him at any  
16 given time?

17 A The width of a street, which is only about  
18 ten, fifteen feet.

19 Q It had snowed the night before, is that  
20 correct?

21 A Yes, sir.

22 Q And did you get a good look at his face,  
23 sir?

1 A Yes, sir.

2 Q Now let me ask you this: did the defend-  
3 ant have a hat on, or didn't he have on a hat?  
4

5 A No, he was not wearing a hat.

6 Q I see. And did you see what, if anything,  
7 he carried in his hand?

8 A No, I didn't notice anything in his hand.

9 Q You don't know whether or not he had a  
10 hat in his hand or whether he had nothing in his hand?  
11

12 A Right.

13 Q Let me ask you this: did there come some  
14 time after January 11, 1965 when you saw that defendant,  
15 Sebastian Rossilli, again?

16 A Yes, sir. It was at a police station. We  
17 were called up and we were taken over to identify that man  
18 there in a line up.

19 Q I see. What date was that, can you recall?  
20

21 A That was February 1st.

22 Q Now would you describe how you identified  
23 those men--this man, rather.

24 A We were asked--we were told that they had  
25 a suspect or somebody there and that they believed that that

1 was the man, and we were asked to go in one at a time.  
 2 I went in last. I was the last one. I didn't see any of  
 3 the other people and I was asked to go in and I was asked  
 4 to pick him out of a group of four men through a mirror.  
 5

6 Q Now, was he standing in a group of four  
 7 other men?

8 A Yes.

9 Q Had you ever seen the four other men in  
 10 your life?

11 A No.

12 Q Did anybody indicate to you who was  
 13 Sebastian Rossilli?

14  
 15 MR. WEINBERG: Objected to, your Honor,  
 16 let the witness testify as to what happened.

17 THE COURT: Sustained.

18 Q You say outside somebody told you that they  
 19 had the suspect, is that correct?

20 A Yes.

21 MR. WEINBERG: Objected to.

22 MR. DOOLITTLE: That is what the wit-  
 23 ness testified to.

24 THE COURT: Overruled.  
 25

1 Q Prior to the time that you were actually  
2 brought to this mirror to look at these men, did anybody  
3 indicate to you which man to point out?

4 A No, sir.

5 Q Did at any time anybody indicate to you  
6 which man to point out?

7 A No, not at all.

8 Q Did you point him out without any assistance  
9 or any help from anybody else?

10 MR. WEINBERG: Objected to, your Honor.

11 MR. DOOLITTLE: I think this is import-  
12 ant, your Honor.

13 THE COURT: Well, what I'd like--I'd  
14 like to first have the witness--let him tell the  
15 story and if his recollection is exhausted then,  
16 if in good faith you feel there is more, I'll per-  
17 mit you to ask him more specific questions. Until  
18 we cover the thing by his recital in his words  
19 rather than questions of a leading nature, I'll  
20 rule we will not have those leading questions.

21 MR. DOOLITTLE: Your Honor, I think he  
22 has given a narrative of what happened. Now I  
23  
24  
25

1 want to get more specific details. I think he  
2 testified--I think his testimony is on the record  
3 rather than me repeating it--I think there was a  
4 narrative answer to what he did. I think he said  
5 the boys went in individually. He said he was the  
6 last. "I looked through the mirror and picked  
7 him out of four men." I just want to get more  
8 specific.  
9

10 THE COURT: Well, we're at a point now--  
11 Mr. Weinberg, I'll overrule your objection.  
12

13 MR. DOOLITTLE: I'll repeat the ques-  
14 tion now.

15 Q Prior to your going into the room did any-  
16 body indicate to you which man was Sebastian Rossilli?

17 A No, sir.

18 Q Did you talk to any of the other boys when  
19 they came back before you were allowed to --  
20

21 A No, I didn't see them after that.

22 Q When you went in, who did you go in with?

23 A A detective.

24 Q Do you know which detective?

25 A No, I don't, sir.

1 Q Did the detective indicate to you who was

2 Sebastian Rossilli?

3 A No, sir.

4 Q Did you indicate to the detective whom you  
5 identified as being the man who was on Bay Boulevard on  
6 January 11, 1965?  
7

8 A Yes, sir.

9 Q Is that man in Court here?

10 A Yes, sir.

11 Q Which man is he?

12 A The man with the gold tie, sitting at the  
13 second table.  
14

15 Q Is there any question in your mind about  
16 that?

17 A No, sir.

18 Q The other four men you had never seen before  
19 in your life?

20 A Correction. There was three other men,  
21 actually, and him.  
22

23 Q I see. There were three men, including  
24 Rossilli, which made it four men when you were in--

25 A Correct.

1 MR. DOOLITTLE: No further questions.

2 CROSS EXAMINATION

3 BY MR. WEINBERG:

4 Q How old are you now?

5 A Seventeen.

6 Q How old were you on January 11, 1965?

7 A Fifteen.

8 Q Are you impressed by police officers?

9 A In a way, yes.

10 Q You are. And on January 11, 1965, were  
11 you impressed by Detective Altomare?  
12

13 A No.

14 Q You were shovelling snow on January 11th,  
15 is that correct?  
16

17 A Yes, sir.

18 Q And you were with two other friends?

19 A Yes, sir.

20 Q What were their names?

21 A Bill Henderson and Brian Barto.

22 Q And at the time you were shoveling snow did  
23 you know where 239 Bay Boulevard was?  
24

25 A No, sir.

1 Q You didn't know where that was at all?

2 A No.

3 Q Did you see any men run out of this 239  
4 Bay Boulevard?

5 A No, just from that direction.

6 Q You saw men coming from that direction.  
7 You didn't know where the house was, though, did you?

8 A No.

9 Q By the way, did you see the car that these  
10 men got into?

11 A Yes, sir.

12 Q What kind of a car?

13 A It was a Ford.

14 Q Convertible, hardtop?

15 A I believe it was a convertible.

16 Q And do you know what color it was?

17 A A dark maroon.

18 Q What were you studying on January 11, 1965  
19 in Long Beach High School? What courses did you take?

20 A I had English, my regular English course,  
21 history.

22 Q History what?